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SF Ethics Commission

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January 8, 2007

Ethics Commission

25 Van Ness Ave., Suite 220

San Francisco, CA 94102

Phone 252-3100 Fax 252-3112

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SAN FRANCISCO ETHICS COMMISSION

NOTICE OF REGULAR MEETING

January 8, 2007, 5:30 P.M.

and AGENDA

Room 408 City Hall

1 Dr. Carlton B. Goodlett Place, San Francisco

- I. Call to order and roll call.**
- II. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.**
- III. Statements of Incompatible Activities. The Commission has adopted a common template for Statements of Incompatible Activities (SIAs). At this meeting, the Commission will consider draft SIAs for initial adoption. Representatives of departments under consideration may attend to make comment on SIAs and possibly answer questions from**

Commissioners. Departments under consideration include: the District Attorney and the Juvenile Probation Department and Commission. The draft SIAs for these departments are available at the Commission office and on the Commission website. (Discussion and possible action.)

- IV. Consideration of a request for waiver under section 3.224 of the San Francisco Campaign and Governmental Conduct Code regarding compensated advocacy. The Mayor wishes to appoint Dr. Vahis Sattary, a structural engineer, to the Building Inspection Commission. Dr. Sattary would occupy the seat mandated to be filled by a structural engineer. The Mayor's office has requested a waiver that would allow Dr. Sattary to represent private parties before other City officers and employees as part of his duties as a structural engineer while serving on the Building Inspection Commission. A staff report will be available at the Commission office and on the Commission website. (Discussion and possible action.)
- V. FY 07-08 budget. A proposed Ethics Commission budget for the fiscal year beginning July 1, 2007 is due in February 2007. At this meeting, the Commission will discuss a possible budget submission for FY 2007-2008. A staff memo will be available at the Commission office and on the Commission website. (Discussion and possible action.)
- VI. Priorities for 2007. At the 2006 Annual Retreat in December, Members of the Commission articulated six priorities for 2007. The Commission will conduct a

discussion of ideas for achieving these priorities. They include: 1) enhanced fines collections and enforcement, 2) overview of the Lobbyist and Campaign Consultant Ordinances, 3) education and outreach, 4) technology enhancement, 5) enhanced enforcement of Statements of Economic Interests filing requirements, and 6) exploring methods of tracking independent expenditures and compliance with public finance expenditure limits. (Discussion.)

VII. Minutes of the Commission meetings of December 11, 2006 and December 16, 2006. (Discussion and possible action.)

VIII. Executive Director's Report. An update of important Ethics Commission staff activities since the previous monthly meeting. (Discussion.)

IX. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

X. Adjournment.

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SF Ethics Commission

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January 8, 2007

(Approved as Amended February 12, 2007)

Minutes of the Regular Meeting of
The San Francisco Ethics Commission
January 8, 2007
Room 408, City Hall

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I. Call to order and roll call.

Chairperson Gusukuma called the meeting to order at 5:32 p.m. Chairperson Gusukuma announced the resignation of Commissioner Kimon Manolius, thanked him for his service to the Commission and wished him well.

COMMISSION MEMBERS PRESENT: Emi Gusukuma, Chairperson; Eileen Hansen, Commissioner; Susan Harriman, Commissioner; and Charles Ward, Commissioner.

STAFF PRESENT: John St. Croix, Executive Director; Mabel Ng, Deputy Executive Director; and Linda Bjorke, Senior Investigator/Legal Analyst.

OFFICE OF THE CITY ATTORNEY: Jon Givner, Deputy City Attorney.

OTHERS PRESENT: Linda Klee, Chief of Administration, Office of the District Attorney; Nan Su, Falun Gong practitioner; Bill Siffermann, Chief Probation Officer, Juvenile Probation Department and Commission; Wade Crowfoot, Director of Government Affairs, Office of the Mayor; Vahid Sattary; Miguel Bustos, Senior Mayoral Aide, Office of the Mayor; Jamiene Studley; Charles Marsteller; and other unidentified members of the public.

MATERIALS DISTRIBUTED:

- San Francisco Office of the District Attorney Statement of Incompatible Activities;
- San Francisco Juvenile Probation Commission and Department Statement of Incompatible Activities;
- Proposed Schedule of SIA hearings for Ethics Commission Initial Approval;
- Memorandum from Executive Director to Ethics Commission re: Request from the Mayor for Waiver of S.F. Campaign & Governmental Conduct Section 3.224 for an appointment to the Building Inspection Commission (Compensated Advocacy), January 3, 2007, with attached waiver request from the Office of the Mayor, Wade Crowfoot, Director of Government Affairs, December 22, 2006;
- Memorandum from Executive Director to Ethics Commission re: Budget Proposal Outline, FY 07-08, January 4, 2007;
- Minutes of the Regular Meeting of the San Francisco Ethics Commission, December 11, 2006;
- Minutes of the Special Meeting of the San Francisco Ethics Commission, December 16, 2006;
- Executive Director's Report to the San Francisco Ethics Commission for the Meeting of January 8, 2007;
- Revenues Received as of December 28, 2006;
- 5-Month Goals Target, Ethics Commission, 2007;
- San Francisco Ethics Commission By-Laws with proposed amendments;
- Memorandum from Executive Director to Interested Persons re: Interested Persons, mailing list update, January 1, 2007.

II. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

Nan Su, Falun Gong practitioner provided testimony regarding Falun Gong, organ harvesting in China and the San Francisco Chinese New Year Parade's refusal to allow Falun Gong to participate in the

parade.

Chairperson Gusukuma stated that the Commission does not accept complaints in open session and the proper method is to file a complaint with Commission staff. Mr. Su stated that he has contacted Commission staff, but has not heard back from them.

III. Statements of Incompatible Activities. The Commission has adopted a common template for Statements of Incompatible Activities (SIAs). At this meeting, the Commission will consider draft SIAs for initial adoption. Representatives of departments under consideration may attend to make comment on SIAs and possibly answer questions from Commissioners. Departments under consideration include: the District Attorney and the Juvenile Probation Department and Commission. The draft SIAs for these departments are available at the Commission office and on the Commission website.

Linda Klee, Chief of Administration, Office of the District Attorney, stated that the SIA generally follows the template, but includes the District Attorney's statement of purpose because the department must also answer to the State of California. She stated that the California Government Code prohibits employees of the District Attorney from working on any outside criminal cases anywhere in the state, so that prohibition had to be included. She also stated that it is important to recognize that the business of the District Attorney-criminal prosecution-is different from that of other agencies, so extra care must be taken to avoid potential misunderstandings and abuse of that power. Commissioner Harriman asked why examples were deleted from the template for this SIA. Ms. Klee stated that she believed the language was clear without the examples and that the examples might lead to wrong conclusions by employees. She stated that the office's power must be recognized, and explained that, for example, District Attorney letterhead is never appropriate for any outside activity. She noted that the District Attorney's SIA retained examples related to minor phone use and di minimus gifts.

Commissioner Harriman asked why the SIA refers to the entire State Bar Act when only some sections apply and much is unrelated. Ms. Klee stated that it was for simplicity because all attorneys come under the State Bar Act, but she stated that she can be more specific.

Commissioner Hansen asked about the SIA process. Ms. Klee stated that the only people involved so far have been those at the top-the Chief Administrator, heads of the criminal and special operations divisions, the District Attorney and her second in command.

Commissioner Hansen asked why the SIA includes paragraphs with sections of the Constitution and Penal Code, and Ms. Klee stated that the SIA needs to be clear that the District Attorney is a state officer first, so state law trumps local law if there is a conflict between the laws.

Commissioner Ward asked about ambiguity in Section III(A)(1), which allows an exception for representation of an employee's self or member of their family, and Section III(B)(1) where the exception does not apply for Assistant District Attorneys or District Attorney Investigators. Ms. Klee explained that most union employees have the right to a hearing related to any actions taken by them within the scope of their employment, but criminal representation is never allowed. Commissioner Ward asked for an amendment to clarify, and Ms. Klee agreed.

Public comment:

None.

Motion 07-1-8-1 (Hansen, Harriman): Moved, seconded and unanimously passed (4-0): that the Commission initially approve the Office of the District Attorney's SIA as amended.

Bill Siffermann, Chief Probation Officer, Juvenile Probation Department and Commission, stated that he has collaborated with Lidia Sticlich, Chair of the Juvenile Probation Commission, and he is confident that the SIA reflects the department's mission and parallels its policy and procedure manual. He stated that he was unable to calendar the SIA for the Juvenile Probation Commission's January 18, 2007 meeting, so the SIA has not been approved by that Commission. He stated that the SIA will be calendared for the commission's next meeting and, after approval, shared with employees.

Chairperson Gusukuma asked why language in Section III distinguishes between "any juvenile under the care, custody, control or supervision" and "probationers." Mr. Sifferman stated that not all juveniles under the care or custody of the department are probationers with formal charges and adjudication; some juveniles are at various points in the process or placed in a treatment facility.

Commissioners Gusukuma and Harriman requested that Section III(A)(1)(a) distinguish between the prohibitions on physical or romantic relationships with a juvenile and remaining in contact with a juvenile or their family after the conclusion of the working relationship. Commissioners discussed whether to hold off on approval until the Juvenile Probation Commission has formally approved the SIA or whether to move forward, recognizing that the Commission will see this SIA again for final approval.

Public comment:

None.

Motion 07-1-8-2 (Harriman, Ward): Moved, seconded and passed (3-1, Hansen opposed): that the Commission initially approve the Juvenile Probation Department and Commission SIA as amended.

IV. Consideration of a request for waiver under section 3.224 of the San Francisco Campaign and Governmental Conduct Code regarding compensated advocacy. The Mayor wishes to appoint Dr. Vahid Sattary, a structural engineer, to the Building Inspection Commission. Dr. Sattary would occupy the seat mandated to be filled by a structural engineer. The Mayor's office has requested a waiver that would allow Dr. Sattary to represent private parties before other City officers and employees as part of his duties as a structural engineer while serving on the Building Inspection Commission. A staff report will be available at the Commission office and on the Commission website.

Wade Crowfoot, Director of Government Affairs, Office of the Mayor, expressed support and gratitude to the Commission on its diligence in the SIA approval process.

Mr. Crowfoot stated that the Mayor requests the Commission's approval for his appointment of Vahid Sattary, a structural engineer with 20 years experience in seismic issues. Building Inspection Commission President Debra Walker and Supervisor Aaron Peskin have both indicated support for the appointment. The law requires that this appointment be a structural engineer who lives and works in San Francisco. Dr. Sattary's appointment would necessitate a waiver of Section 3.224 to allow Dr. Sattary, who is self-employed and consults with clients all over the Bay Area, to conduct his business in San Francisco in an appropriate manner. Mr. Crowfoot introduced Miguel Bustos, the Mayor's liaison to the Commission.

Vahid Sattary stated that he is excited about the opportunity and believes that his expertise and background bring qualifications needed by Department of Building Inspection.

In answer to Commissioner Hansen, Dr. Sattary stated that he cannot state an accurate percentage of the amount of his work that takes place in San Francisco because he provides consulting to other engineers. He estimated that 20 percent of his work under the package of other engineers is in San Francisco, with occasional independent plans and calculations for small-scale projects provided to DBI-probably four meetings in the past two years. He stated that he can delegate contacts with DBI where his work is limited to technical design. Dr. Sattary stated that he shares concerns about commissioners' potential influence over DBI staff, and he believes he must hold himself to the highest standard. He stated that he does not view the two restrictions recommended by staff-recusal on appeals and resolution of any conflicts through the director of DBI-to be restrictions on his work because his involvement is technical, so he does not anticipate any problems.

Chairperson Gusukuma commended the Office of the Mayor for its commitment to diversity.

Public comment:

None.

Motion 07-1-8-3 (Hansen/Harriman): Moved, seconded and unanimously passed (4-0): that the Commission approve waiver under Section 3.224 of the San Francisco Campaign and Governmental Conduct Code regarding compensated advocacy, with the two restrictions recommended by staff. V. FY 07-08 budget. A proposed Ethics Commission budget for the fiscal year beginning July 1, 2007 is due in February 2007. At this meeting, the Commission will discuss a possible budget submission for FY 2007-2008. A staff memo will be available at the Commission office and on the Commission website.

Executive Director St. Croix reviewed two alternatives to staff's original budget proposal (which seeks funding for a new IT staff, a Commission secretary, an investigations clerk, and a campaign finance clerk) which are based on Commissioner Hansen's request that, in addition to previously proposed

staffing, the proposal include an additional investigator and a fines collection assistant. Modification 1 includes an additional investigator, and Modification 2 includes the investigator and fines collection assistant.

Commissioner Harriman asked which version he prefers, and Executive Director St. Croix stated that he is fine with Modification 1, though he is doubtful that the request for additional money will pass, considering that the Mayor's request for a 3% across-the-board cut and demand for \$90,000 in attrition savings in the next budget. Chairperson Gusukuma asked how many staff will be in the enforcement division after Modification 1, and Executive Director St. Croix answered 5 staff-the lead investigator, three investigators and a clerical staff person. Commissioner Hansen asked how often the new campaign finance clerk will be available to assist the fines collection officer, and Executive Director St. Croix stated that approximately 25% of that person's time will be spent doing mailings and other administrative functions currently handled by the fines collection officer. He stated that the department will increase the number of audits and collection of filings data and will reassign some duties in order to focus on effectiveness in the areas where the department needs the most help. He stated that he expects to hire a new educator in the next few weeks to help with the SIAs. Commissioner Hansen suggested formation of a committee or other body to engage in ongoing discussion with the Executive Director about reorganization of staff as it connects to the budget. Public comment:

None.

Motion 07-1-8-4 (Harriman/Ward): Moved, seconded and unanimously passed (4-0): that the Commission adopt the version of the proposed budget referred to as Modification 1 in staff's recommendation.

VI. Priorities for 2007. At the 2006 Annual Retreat in December, Members of the Commission articulated six priorities for 2007. The Commission will conduct a discussion of ideas for achieving these priorities. They include: 1) enhanced fines collections and enforcement, 2) overview of the Lobbyist and Campaign Consultant Ordinances, 3) education and outreach, 4) technology enhancement, 5) enhanced enforcement of Statements of Economic Interests filing requirements, and 6) exploring methods of tracking independent expenditures and compliance with public finance expenditure limits.

Chairperson Gusukuma asked for staff guidance regarding enhanced fines collections and enforcement. Executive Director St. Croix stated that he anticipates referring some fines collection to enforcement and setting policies for waivers, such as no waiver for pre-election periods and a 5-point process to evaluate waiver requests for post-election periods. He stated that he believes staff will meet collections targets this year.

Chairperson Gusukuma asked staff to submit a memorandum outlining priorities and potential timelines; an explanation of the waiver process; process and priorities for referrals to Bureau of Delinquent Revenues; and a review of settlement procedures, including the principles used and how to tighten up the process.

Public comment.

None.

VII. Minutes of the Commission meetings of December 11, 2006 and December 16, 2006. Commissioners recommended amendments to the December 11, 2006 Minutes.

Public comment:

None.

Motion 07-1-8-5 (Harriman/Hansen): Moved, seconded and unanimously passed (4-0): that the Commission approve the Minutes for the Regular Meeting of December 11, 2006 as amended, so long as the amendments are reflected in the audio tape of the meeting.

Commissioners recommended no amendments to the December 16, 2006 Minutes.

Public comment:

None.

Motion 07-1-8-6 (Ward/Harriman): Moved, seconded and unanimously passed (4-0): that the Commission approve the Minutes for the Special Meeting of December 16, 2006.

VIII. Executive Director's Report. An update of important Ethics Commission staff activities since the

previous monthly meeting.

Executive Director St. Croix stated that proposed amendments to the Bylaws reflect changes related to the Commission's recent move, and the Bylaws will be on the agenda for the February 2007 meeting. He stated that a mailing went out to update the interested persons list, and he will interview candidates for the education position this week and for the new investigator position next week. He also stated that the Commission will hold an interested persons meeting on February 13, 2007 to review draft CFRO Regulations. Executive Director St. Croix called attention to a \$29,000 Bureau of Delinquent Revenues settlement with David Slosberg, the treasurer of Residential Builder's Association, who admitted personal liability on behalf of the committee. Executive Director St. Croix also called attention to the high level of public use of the Commission's website, and he recognized Steven Massey's excellent work.

Commissioner Hansen noted that the Executive Director reports no new complaints, and asked that staff get back to her about whether a complaint was filed by a person who attempted to make an oral complaint at a previous Commission meeting. Commissioner Hansen also asked about a reference to pending globally-canvassed forfeiture assessments in the report, and she asked whether this refers to a group of assessment letters that were mentioned in a Fog City Journal article. Executive Director St. Croix stated that pending assessments are not included in the totals listed in the report because they have not been assessed yet. He stated that the letters referred to in the article were drafts, and he chose not to send them out the week before the election to avoid the appearance of any political intent. Deputy Director Ng stated that she believed that the draft letters were obtained by the Fog City Journal after Commission staff released them in response to a public records request. The Commissioners discussed the process of assessing forfeitures immediately upon staff's identification of undisclosed contribution information. Executive Director St. Croix explained that global assessment of all candidates and committees requires thorough manual review of every campaign finance disclosure statement filed for a particular period, so it can only be done periodically when the Commission has staff time and resources.

Public comment:

Charles Marsteller thanked the Executive Director for the synopsis of the budget cycle, and he stated that 2006 was a watershed year. He also thanked former Commissioner Manolious for his work on the budget, and he stated that former Commissioner Manolious was a big asset to the Commission. Mr. Marsteller stated that he found the yield-to-date information on collections to be instructive and interesting. Mr. Marsteller stated that, regarding fines collection, the Commission must look at data integration of overlapping databases to cross-tabulate data and make sure it all flows. He stated that the Commission needs to do some good exploration about where the problems are and automate the processes.

IX. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

None.

X. Adjournment.

Motion 07-1-8-7 (Harriman/Hansen): Moved, seconded and unanimously passed (4-0): that the Commission adjourn.

The meeting was adjourned at 7:06 p.m.

Respectfully submitted,

Linda
Bjorke
Senior Legal Analyst/Investigator

Ethics Commission



25 Van Ness Ave., Suite 220
San Francisco, CA 94102
Phone 252-3100 Fax 252-3112

**SAN FRANCISCO ETHICS COMMISSION
NOTICE OF REGULAR MEETING**

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February 12, 2007 5:30 P.M.

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Room 408 City Hall

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- I. Call to order and roll call.
- II. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.
- III. On-Line Filing System. The Ethics Commission has had ongoing discussions regarding its online filing system for campaign disclosures, whether it should update its current On Line Filing System (OLFS) with the Department of Telecommunications and Information Services (DTIS), purchase a different online filing system, or use a different vendor. As part of these discussions, DTIS recently informed the Commission that it will no longer support applications built in Lotus, which is the system that is used by OLFS. Thus, if the Commission wishes to continue to provide online filing of campaign disclosure reports, it is likely that it will need to purchase a new system or use a new vendor. A representative of DTIS will be available at the meeting to provide information on this development. (Discussion and possible action.)
- IV. Statements of Incompatible Activities. The Commission has adopted a common template for Statements of Incompatible Activities (SIAs). At this meeting, the Commission will consider draft SIAs for initial adoption. Representatives of departments under consideration may attend to make comment on SIAs and possibly answer questions from Commissioners. Departments under consideration include: the Civil Service Commission; Employees' Retirement System; Commission and Department on the Status of Women; Adult Probation Department; Department of Children, Youth and Families; Human Rights Commission; and Ethics Commission. The draft SIAs for these departments are available at the Commission office and on the Commission website. (Discussion and possible action.)
- V. Consideration of a request for waiver from fees for the late filing of pre-election reports by the San Francisco Police Officers Association PAC. While the Commission has delegated the authority to waive late fees to the Executive Director,

representatives of the SFPOA PAC have asked that they be allowed to make a presentation to the Commission regarding the imposition and waiver of such fees. A general discussion of the procedures followed and factors considered in the fine assessment and waiver process may also occur. (Discussion.)

- VI. Selection of Random Audits of 2006 Committees. Staff estimates that it will have time and resources to conduct as many as twenty random audits of non-publicly financed candidate, ballot measure and general purpose committees that were active in the 2006 elections. Some of these audits will be performed during the remainder of this fiscal year; the others will be performed in the next fiscal year. The Commission may choose these twenty committees on a random basis at this meeting. (Discussion and possible action.)
- VII. Consideration of draft advice letter. Beverly Prior, an architect, has requested the Ethics Commission's advice regarding the application of section 3.222 of the Campaign and Governmental Conduct Code to modifications of contracts she entered into prior to her appointment to the Arts Commission. Two Commission members have requested that the draft advice letter prepared by staff be calendared for discussion at this meeting. A copy of draft advice letter is available at the Commission office and on the Commission website. (Discussion and possible action.)
- VIII. Amendment to Bylaws. Last month, members of the Commission were provided with notice of proposed amendments to the Commission's bylaws to reflect changes in the Commission's address and telephone numbers and the identification of laws within its jurisdiction. At this meeting, the Commission will vote on whether to approve the changes to the bylaws. (Discussion and possible action.)
- IX. Amendment to Regulation regarding Sunshine Declaration. Under Ethics Regulation 67.33-1, department heads and members of boards and commissions who file their Statements of Economic Interests with the Ethics Commission must also file an annual Sunshine Ordinance Declaration with the Commission to indicate that they have read the Sunshine Ordinance and have attended, or will attend when next offered, a training session on the Ordinance by April 1. Last year, the Sunshine Declaration was combined into one certificate that allowed such City officers to show compliance with the Sunshine Ordinance and AB 1234, the new state mandated two hours of ethics training that such officers must undertake within one year of taking office and once every two years thereafter. Under current regulation, the Sunshine Declaration is due April 1. However, a certificate to indicate compliance with AB 1234 ethics training is not due until December 31. Staff proposes to amend Regulation 67.33-1 to change the date that the Sunshine Declaration is due to December 31, so that it is consistent with the due date for the filing of the certificate of training under AB 1234. A staff report and copy of the proposed regulation are available at the Commission office and on the Commission website. (Discussion and possible action.)

- X. **Election of Chair and Vice-chair.** The Commission will elect a Chair and Vice-chair to serve for the coming year. (Discussion and possible action.)
- XI. **Minutes of the Commission meetings of January 8, 2007.** (Discussion and possible action.)
- XII. **Executive Director's Report.** An update of important Ethics Commission staff activities since the previous monthly meeting. (Discussion.)
- XIII. **Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.**
- XIV. **Adjournment.**

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February 12, 2007

(Approved as amended, March 12, 2007)

Minutes of the Regular Meeting of

The San Francisco Ethics Commission

February 12, 2007

Room 408, City Hall

I. Call to order and roll call.

Chairperson Gusukuma called the meeting to order at 5:33 p.m.

COMMISSION MEMBERS PRESENT: Emi Gusukuma, Chairperson; Eileen Hansen, Commissioner; Susan Harriman, Commissioner; Jamieenne Studley, Commissioner; and Charles Ward, Commissioner.

STAFF PRESENT: John St. Croix, Executive Director; Mabel Ng, Deputy Executive Director; Shaista Shaikh, Assistant Deputy Executive Director; Steven Massey, Information Technology Officer; and Kristian Ongoco, Campaign Finance Officer.

OFFICE OF THE CITY ATTORNEY: Jon Givner, Deputy City Attorney.

OTHERS PRESENT: John Tennant, General Counsel San Francisco Police Officer's Association; Diane Fishburn, Special Counsel, Olson, Hagel & Fishburn; Richard Rios, Special Counsel, Olson, Hagel & Fishburn; Carol Keane, C.P.A., San Francisco POA; Martin Halloran, Treasurer SFPOA; Norm Nickens, San Francisco Employees' Retirement System; Clare Murphy, Executive Director of San Francisco Employees' Retirement System; Emily Murase, Executive Director of the San Francisco Department on Status of Women; Blair Adams CCO DTIS; Marco Bruno, DTIS; Kate Favetti, Executive Officer, Civil Service Commission; Arturo Faro, San Francisco Adult Probation Department; Julie Ansell, Department of Children, Youth and their Families; Virginia Harmon, Executive Director of Human Rights Commission; Charles Marsteller; David Pilpel; Kimo Crossman; Anita Mayo; Doug Comstock; Oliver Luby; Jim Sutton and other unidentified members of the public.

MATERIALS DISTRIBUTED:

- San Francisco Civil Service Commission Statement of Incompatible Activities;
- San Francisco Employees' Retirement System Statement of Incompatible Activities;
- San Francisco Commission and Department on the Status of Women Statement of Incompatible Activities;
- San Francisco Adult Probation Department Statement of Incompatible Activities;
- San Francisco Department of Children, Youth and Families Statement of Incompatible Activities;
- San Francisco Human Rights Commission Statement of Incompatible Activities;
- San Francisco Ethics Commission Statement of Incompatible Activities;
- Proposed Schedule of SIA hearings for Ethics Commission Initial Approval;
- Fax memorandum from Olson Hagel & Fishburn LLP on behalf of the San Francisco Police Officers Association to Ethics Commission re Regarding Request for Waiver from fees for the late filing of pre-election reports;
- Memorandum from Executive Director to Ethics Commission re: Overview of Campaign Filing Process
- Memorandum from Executive Director to Ethics Commission re: Audit Selection of Year 2006 Committees
- Memorandum from Executive Director to Ethics Commission re: Draft Formal Advice Letter
- Memorandum from Executive Director to Ethics Commission re: Budget Proposal Outline, FY 07-08, January 4, 2007;
- Minutes of the Regular Meeting of the San Francisco Ethics Commission, January 8, 2007;
- Executive Director's Report to the San Francisco Ethics Commission for the Meeting of February 12,

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2007;

- San Francisco Ethics Commission By-Laws with proposed amendments;

II. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

Tim Durning, Treasurer of the Harvey Milk Club stated that he would like the Ethics Commission meetings to be televised. Kimo Crossman concurred.

Oliver Luby raised concerns about whistleblower problems in the SIA template and gave examples of situations the SIA would prohibit City employees from doing.

David Pilpel asked that a list be prepared of those who have not performed their filing obligations and if the Commission could bring up Item IX, amendment to regulation regarding Sunshine Declaration, before Item VIII, Amendment to Bylaws.

Joe Lynn commented on the Executive Director's Report, specifically that he was in support of the efforts to urge BDR to prioritize the collections Ethics fines.

Chairperson Emi Gusukuma announced that Item Five, a request for waiver from fees of pre-election reports by the San Francisco Police Officers Association PAC would be heard first because of the distance that the persons seeking to testify would have to travel to return home. Thus Item V was heard before item III and IV.

III. Consideration of a request for waiver from fees for the late filing of pre-election reports by the San Francisco Police Officers Association PAC. While the Commission has delegated the authority to waive late fees to the Executive Director, representatives of the SFPOA PAC have asked that they be allowed to make a presentation to the Commission regarding the imposition and waiver of such fees. A general discussion of the procedures followed and factors considered in the fine assessment and waiver process may also occur. (Discussion.)

Diane Fishburn, an attorney for Olson, Hagel, and Fishburn, Special Counsel for the SFPOA, stated that the imposed fine of \$23,379.05 is extremely large under the circumstances. She explained that there are a total of eleven reports, including supplemental and late independent expenditure reports which were filed timely in 2004 and 2006. However, the reports were filed with the Department of Elections, not the Ethics Commission. The reports were accepted by the Department of Elections, but the client was not notified that the filing was filed in the incorrect place for two years. It is a ten dollar per day fine, and two years have elapsed. The filer is a state general purpose committee and files regularly with the Secretary of State, Los Angeles Registrar-Recorder, and the Department of Elections, not the San Francisco Ethics Commission. The SFPOA was triggered to file these reports because it made independent expenditures in city elections. She expressed that there was no intent to evade disclosure. The Political Reform Act and the local ordinance contain same standards for the granting of waivers. The Commission may reduce or waive the fine if the violation was not willful and enforcement will not further the purpose of the law.

She urged the Commission to waive the penalty or to defer the decision to the Executive Director to apply a policy to waive the penalty when a filer files with the Department of Elections instead of the Ethics Commission.

She noted that the Department of Elections, Ethics Commission, and the Fair Political Practice Commission websites do not direct general purpose committees to where they should be filing. She asked for more education, and said that most state general purpose committees look to the FPCC for guidance. A \$23,000 administrative penalty is large, and the reporting was not a secret by any means.

Executive Director John St. Croix stated that the committee did file with Elections and was very cooperative. The Commission did waive a substantial portion of the original fine. However, the Commission has a policy of not waiving penalties for non-filing of pre-election filings. He noted that information is more readily available at the Ethics Commission than at other sources.

Commissioners discussed the policy of not granting waivers for pre-election statements and uniformly applying the policy. Executive Director St. Croix outlined the general appeal process and the POA's specific case.

Commissioner Harriman asked if the Commission clearly informed candidates and committees of where they should be filing. Executive Director St. Croix answered that generally local filers are

aware of their responsibility to file with the Ethics Commission.

Commissioner Harriman expressed concern that the time it took to discover the error created a greater fine, and this should be revisited. Commissioner Jamieenne Studley agreed that the passage of time is related to the Commission's own workload, and voiced that the filer did nothing different. Commissioner Charles Ward said that this is all true only if the late filer does know or reason to know that they are delinquent in their filing. Otherwise, there is a reason for the fine to increase with the passage of time.

Chairperson Emi Gusukuma stated that the Commission will move ahead with public comment and return to the item.

Public Comment:

Charles Marsteller commented that the POA has been a long time filer with the Ethics Commission and asked what happened before 2004. Were they consistently filing with Ethics and then ceased filing with Ethics? He pointed out that it would be important to learn how this became a problem when it was not a problem before.

Joe Lynn mentioned that the POA had a previous fine of \$17,000 with the Ethics Commission, and consequently the POA should know where to file.

Oliver Luby remarked that the forms and manuals clearly state where the filings should be received. He described the overwhelming duties of the Department of Elections and the influx of reports that they receive. He stated that there is ongoing harm if the reports are not turned in. He detailed the significant amount of activity of the POA relating to each election.

Campaign finance attorney Jim Sutton complimented the Chairperson Emi Gusukuma on asking staff to put together a filing process memo. He stated that these are very important policy decisions that should be made by the Commission and not by staff, and hoped that the Commission had input in these policies.

IV. On-Line Filing System. The Ethics Commission has had ongoing discussions regarding its online filing system for campaign disclosures, whether it should update its current On-Line Filing System (OLFS) with the Department of Telecommunications and Information Services (DTIS), purchase a different online filing system, or use a different vendor. As part of these discussions, DTIS recently informed the Commission that it will no longer support applications built in Lotus, which is the system that is used by OLFS. Thus, if the Commission wishes to continue to provide online filing of campaign disclosure reports, it is likely that it will need to purchase a new system or use a new vendor. A representative of DTIS will be available at the meeting to provide information on this development. (Discussion and possible action.)

Marco Bruno, a representative from DTIS explained that the department will no longer support Lotus Notes, the database in which the On-Line Filing System is built. DTIS will be focusing on smaller cell technologies. There are still alternative options and opportunities for applications development; however, it would take a significant investment. DTIS will support the existing application until June. If the Commission wants to save money, the Commission could continue using OLFS, but DTIS will no longer support it. He states that this is a major risk. There is only one staff member who is capable of programming the system and is reaching retirement age, and if he is not present nobody will be able to support the program.

Commissioner Hansen thanked Mr. Bruno and said that this places the Commission in a very difficult position if the Commission has to design a system from scratch. She expressed that she had very strong concerns about contracting out and inquired what the DTIS options would be.

Bruno described the history of OLFS and said that DTIS is not forbidding the Commission from using the system, but no staff member will support it. In addressing the issue of private versus public vendor, he stated that it would be extremely costly for DTIS to build a system. It would be double or possibly triple the cost presented in the staff report. He gave examples of other departments that have partnerships with private vendors.

Public Comment:

Joe Lynn commented on his experience with the online database. He stated that local systems are too expensive to maintain and had proposed a state system. The partnership with the McCarthy Institute would provide cost savings and bringing on the University of San Francisco to work on a

campaign finance database would give the City more control. Commissioner Hansen inquired if the Commission could obtain a report back from the partnership.

V. Statements of Incompatible Activities. The Commission has adopted a common template for Statements of Incompatible Activities (SIAs). At this meeting, the Commission will consider draft SIAs for initial adoption. Representatives of departments under consideration may attend to make comment on SIAs and possibly answer questions from Commissioners. Departments under consideration include: the Civil Service Commission; Employees' Retirement System; Commission and Department on the Status of Women; Adult Probation Department; Department of Children, Youth and Families; Human Rights Commission; and Ethics Commission. The draft SIAs for these departments are available at the Commission office and on the Commission website. (Discussion and possible action.)

Civil Service Commission's SIA.

Kate Favetti, Executive Director of the Civil Service Commission, stated that she is happy with the template.

Commissioner Harriman inquired if there was a typo and asked for clarification of the term "officer". Deputy Director Mabel Ng answered by saying that by possibly placing a comma after the word "Director" may clarify the definition. Commissioner Harriman agreed.

Commission and Department on the Status of Women's SIA.

Emily Murase, Executive Director for the Department on the Status of Women, described the timeline of the process in developing the SIA until the department unanimously agreed on the SIA. The department added language that would not prohibit volunteer functions which would be subject to review by the department.

Commissioner Hansen stated that it is traditional for staff to be very involved in the women's community and this is the first time that there is language in an SIA that reflects this. Usually, departments do not allow staff to volunteer and work with functions under its jurisdiction. She asked if there was additional language dealing with members recusing themselves in decisions that would be made if it involved organizations they are affiliated with. Executive Director Murase responded by saying this is not included because it is a Commission policy.

Employees' Retirement System SIA.

Executive Director of the San Francisco Employees Retirement System, Clare Murphy, described the Retirement Board and staff's involvement in developing the SIA.

Commissioner Hansen inquired how the additional section is different from the template language.

Executive Director Clare Murphy talked about the influence that officers may receive from vendors. Deputy City Attorney Jon Givner suggested removing the term "officer" from the template to clarify the additional section.

Commissioner Hansen and Executive Director Clare Murphy agreed to this change.

Adult Probation Department's SIA.

Division Director of the Adult Probation Department, Arturo Faro, spoke on behalf of Chief Woodford, on the department's SIA. He stated that the process included supervisorial and senior staff. The next step is to get feedback from other staff members.

Department of Children, Youth and Families' SIA.

Director of Budget and Operations for the Department of Children, Youth and Families, Julie Ansell stated that the SIA was circulated among staff for suggestions and comments. Once the statement is passed, she noted that they intend to train staff on the statement.

Chairperson Gusukuma asked if there is a prohibition if an employee is also a Board of Director in making decision. Director Julie Ansell responded that in these instances employees recuse themselves if the staff member is on the Board and the Board is a potential grantee for consideration.

Human Rights Commission's SIA.

Executive Director of the Human Rights Commission, Virginia Harmon, introduced the SIA, discussing the Human Rights Commission's responsibility of rewarding city contracts and equal benefits

program.

Commissioner Charles Ward questioned the sections dealing with business, personal uses, outside employment, and financial interests. Executive Director Harmon replied that they have a different approach and rather than prohibiting activities, a disclosure route is better in initiating a discussion. Deputy Executive Director Mabel Ng expressed concerns with the Human Rights Commission's SIA. First, she noted the problem with disclosure of outside activities that are incompatible with employees' duties. Once this SIA is passed, employees are subject to administrative, civil, and criminal penalties. Failure to disclose should be subject to discipline, not penalties since these are minor violations. Secondly, she mentioned that Subsection F is too vague and broad. Finally, she stated that this SIA eliminates the de minimis exception to the gifts rule, which will create a greater workload for staff, the Commission, and potential minor violations. Chairperson EMI Gusukuma noted that Subsection II needed to be renumbered. She reiterated that the problems with disclosure of outside activities, Subsection F, and the de minimis exception need to be revisited.

Ethics Commission's SIA.

Ethics Commission Executive Director John St. Croix presented the Ethics Commission's SIA, and had distributed it to staff for comment. He stated that there was one edit which was to delete an example on page 5 (section IVA) of the original SIA. Deputy Director Ng clarified why the example should be deleted.

Commissioner Jamieenne Studley asked how one would determine in advance an event's political primary purpose. Executive Director John St. Croix explained the prohibitions for staff and Commissioners. He stated that when an officer or employee attends a meeting which he/she discovers has a political primary purpose he/she should leave and disclose it on the record at the next public meeting.

EMI Gusukuma recommended that the Commission should either delete the section or reword it. Commissioner Jamieenne Studley brought up a question under the section of decision maker, where a member of the Ethics Commission may seek an advanced written determination from the Ethics Commission and an appointing authority. She asked who the appointing authority is, and whether both the Ethics Commission and the appointing authority could both make this decision. Deputy City Attorney Givner stated that this is consistent throughout all the SIAs and some concerns have been raised by the unions on this issue.

Commissioner Hansen suggested inserting the word "knows" in section III A1A in the section that deals with Commissioners and staff knowing a primary purpose of an event. Also, she suggested changing the example from a "meeting" to a "fundraiser" so it is clearer.

Chairperson Gusukuma suggested deferring the Human Rights Commission and Ethics Commission's SIAs for initial adoption, and adopting the other departments with the appropriate changes.

Public comment:

David Pilpel stated that the issue of the appointing authority and the Ethics Commission is a problem. He said it should be clear who you go to in seeking a determination and this should be consistent.

With regard to the Department on the Status of Women and the Department of Children, Youth and Families' SIAs, there should be language specific to these departments that have relationships outside of the organizations that receive grants. He also questioned the prohibition of social relationships in the Adult Probation's SIA and its effects if it were extended to all departments.

Oliver Luby voiced that there are many problems with the Ethics Commission's SIA. He stated that the unions would be alarmed with these provisions. He specifically noted pages three and four, stating that staff members are prohibited from making sunshine requests, analyzing public data outside of official duties, and providing procedures to the press.

Joe Lynn commented on the impact of the SIA on whistleblower employees. In regards to endorsing versus attending a meeting, he mentioned in the past how staff attended these meetings to learn how measures got on the ballot. These meetings were for informational uses only. He stated that the SIA would ban that practice. He mentioned that this work started in 2002 and has taken a great amount of time, and there are no resources to do this work.

Motion 07-2-12-1 (Harriman/ Hansen): Moved, seconded and unanimously passed (5-0): that the

Commission initially adopt the Civil Service Commission; Employees' Retirement System; Commission and Department on the Status of Women; Adult Probation Department; and Department of Children, Youth and Families SIAs as presented with amendments discussed by staff and the Commission, deferring the Human Rights Commission and Ethics Commission to a later meeting.

The Commission went into recess at 7:15 p.m. At 7:26 p.m., the Commission reconvened. The Commission next considered Item IX.

VI. Amendment to Regulation regarding Sunshine Declaration. Under Ethics Regulation 67.33-1, department heads and members of boards and commissions who file their Statements of Economic Interests with the Ethics Commission must also file an annual Sunshine Ordinance Declaration with the Commission to indicate that they have read the Sunshine Ordinance and have attended, or will attend when next offered, a training session on the Ordinance by April 1. Last year, the Sunshine Declaration was combined into one certificate that allowed such City officers to show compliance with the Sunshine Ordinance and AB 1234, the new state mandated two hours of ethics training that such officers must undertake within one year of taking office and once every two years thereafter. Under current regulation, the Sunshine Declaration is due April 1. However, a certificate to indicate compliance with AB 1234 ethics training is not due until December 31. Staff proposes to amend Regulation 67.33-1 to change the date that the Sunshine Declaration is due to December 31, so that it is consistent with the due date for the filing of the certificate of training under AB 1234. A staff report and copy of the proposed regulation are available at the Commission office and on the Commission website. (Discussion and possible action.)

Deputy Director Ng discussed a brief memo setting forth the reasons why a change in the regulation is in order. She stated that Sunshine Declarations are filed at the same time as the Statement of Economic Interests. Yet, under the Sunshine Ordinance there is no deadline. April 1st was set as a date for administrative expediency. Since that time, AB 1234 has been implemented, a state law requiring ethics training every two years for those who file Statement of Economic Interests with the Ethics Commission. Staff proposed the date for Sunshine Declaration filing to be changed to the end of the year, which is also the same deadline of the AB 1234 certificate of training. This would ease administration and clarify what statements are required and when.

Public Comment

David Pilpel asked whether that the AB 1234 certificate applies all people who file the Sunshine Declaration. He stated that the deadline should be April 1st, or 30 days after assuming office, or when they are suppose to file the Form 700 with the Commission. He expressed that he is not in favor of this amendment. The intent of the deadline is to receive training as soon as possible and delaying it to the end of the year undermines early education. He finally requested that this matter be taken in front of the Sunshine Ordinance Task Force for its review and comment.

Richard Knee, a representative for the Taskforce, but speaking as an individual, concurred and stated that it would be prudent for the Taskforce to look at this issue. He noted that a unified deadline is not necessarily a good thing, and it will double the volume of paperwork and may be counterproductive. Deputy Executive Director Mabel Ng explained that those who are required to take AB1234 Training are the same filers who are required to file Statement of Economic of Interests and the Sunshine Declaration with the Ethics Commission.

Executive Director St. Croix mentioned that combining AB1234 and Sunshine training was an administrative tool and there was no intent to leave the Sunshine Ordinance Taskforce out of the discussion.

Commissioners commented that the Task Force should provide input regarding the decision. They also discussed that commissioners and board members should be trained as soon as they assume office rather than later in the year.

Deputy Executive Director Ng mentioned that a live training is generally scheduled in March every year; this year, there will be no live training, but a video will be provided on the City Attorney's website. She noted that changing the deadline may or may not result in waiting for the training. Chairperson Gusukuma recommended continuing the matter to the next meeting.

The Commission continued the discussion with item five and concluded that the Commission should use the memo to continue its discussion on priorities.

VII. Selection of Random Audits of 2006 Committees. Staff estimates that it will have time and resources to conduct as many as twenty random audits of non-publicly financed candidate, ballot measure and general purpose committees that were active in the 2006 elections. Some of these audits will be performed during the remainder of this fiscal year; the others will be performed in the next fiscal year. The Commission may choose these twenty committees on a random basis at this meeting. (Discussion and possible action.)

Commissioner Hansen suggested a different process in selecting the committees. She asked the Commission to consider auditing twenty-two committees instead of twenty. She also requested that all committees with financial activity above \$50,000 be audited.

Assistant Deputy Executive Director Shaikh responded that auditing committees with less than \$50,000 in financial activity was part of the educational process. She explained that the front office staff spends a significant time doing facial audits and that many smaller committees do not know how to fill out the forms. The auditing process would reach out to these committees. She also stated that a majority of committees that are in the more than \$100,000 range have professional treasurers and have fewer errors.

Executive Director John St. Croix suggested selecting a total of 17, selecting 7 from the below \$50,000 range, 4 from the \$50,000 to \$100,000 range, and 6 from the more than \$100,000 range, reallocating the formula by redistributing the percentages.

Public Comment

Anita Mayo, Pillsbury Winthrop Shaw Pittman, expressed concern over the audit process and did not view this as fair since the Commission does not view all committees in an equitable manner.

Joe Lynn suggested publicizing the results. He stated that independent expenditures are the largest source of abuse and are never enforced.

Assistant Deputy Executive Director Shaista Shaikh provided slips of paper with the names of 76 committees active during 2006. Anita Mayo read off the names on the slips while Ms. Ng folded them and placed them in a box for random selection.

Ms. Mayo randomly drew the following seven committees from the pool of 54 committees with activity of below \$50,000; 1) Bayard Fong for Board of Education (ID No. 1290444); 2) Campaign for Paid Sick Days, Yes on Prop F (ID No. 1289546); 3) CCSF Educators to Reelect Carter and Grier (ID No. 1289458); 4) Committee to Re-Elect Dr. Dan Kelly (ID No. 1289595); 5) San Franciscans for Preservation Planning (ID No. 1257127); 6) San Francisco Small Business Advocates (ID No. 1226595); and 7) San Francisco Taxpayers Union Political Action Committee (ID No. 1280589).

Ms. Mayo randomly drew the following four committees from the pool of 8 committees with activity between \$50,000 and \$100,000: 1) Building Owners and Managers Association of San Francisco PAC-Ballot Issues (BOMA - Ballot) (ID No. 970432); 2) Hydra Mendoza for School Board (ID No. 1290372); 3) Re-Elect Public Defender Jeff Adachi (ID No. 128353); and 4) Truth on Prop H - Concerned Citizens Against Prop H, Sponsored by: Small Property Owners of San Francisco (ID No. 1292084).

Anita Mayo randomly drew the following six committees from the pool of 14 committees with activity of above \$100,000: 1) Building Owners and Managers Association of San Francisco PAC - Independent Expenditures (BOMA-SF-PAC-IE) (ID No. 870449); 2) Doug Chan for Supervisor (ID No. 1282924); 3) Ed Jew for Supervisor (ID No. 1287561); 4) Friends of Phil Ting (ID No. 1286818); 5) San Francisco Chamber of Commerce 21st Century Committee (ID No. 1257127); and 6) Yes on Proposition A, Let's Rebuild San Francisco's Schools funded in part by a Citizen interested in improving education in San Francisco public schools (ID No. 1290214).

VIII. Consideration of a draft advice letter. Beverly Prior, an architect, has requested the Ethics Commission's advice regarding the application of section 3.222 of the Campaign and Governmental Conduct Code to modifications of contracts she entered into prior to her appointment to the Arts Commission. Two Commission members have requested that the draft advice letter prepared by staff be calendared for discussion at this meeting. A copy of the draft advice letter is available at the Commission office and on the Commission website. (Discussion and possible action.)

Deputy Executive Director Ng provided an overview of section 3.222 of the Campaign

and Governmental Code. The requestor entered a contract with the School Board prior to her appointment to the Arts Commission, and since then the contract has had two modifications. Deputy Executive Director Ng considered four approaches in determining the applicability of section 3.222:

1. all modifications are subject to section 3.222
2. all modifications are not subject to section 3.222
3. all modifications that are contemplated in the original contract are not subject to 3.222
4. if the modification enriches an officer it is subject to 3.222.

Staff determined that all modifications that are contemplated in the original contract are not subject to 3.222.

Chairperson Gusukuma questioned the broad language in the letter and brought up the net loss and gain. She believed that the letter should be fact-specific and that the detailed policy discussion is

not necessary. She suggested using the language in the contract itself in the letter.

Commissioner Susan Harriman agreed with the conclusion of the letter but stated that there is an overstatement of the law on page three.

Public Comment

None.

IX. Amendment to Bylaws. Last month, members of the Commission were provided with notice of proposed amendments to the Commission's bylaws to reflect changes in the Commission's address and telephone numbers and the identification of laws within its jurisdiction. At this meeting, the Commission will vote on whether to approve the changes to the bylaws. (Discussion and possible action.)

Deputy Executive Director Ng discussed the changes, which reflect the Commission's new address and the laws that regulate the Commission.

Public Comment

None.

Motion 07-2-12-2 (Hansen/Studley): Moved, seconded and unanimously passed (5-0): that the Commission adopt the amendment to the bylaws.

X. Election of Chair and Vice-chair. The Commission will elect a Chair and Vice-chair to serve for the coming year. (Discussion and possible action.)

Charles Ward nominated Commissioner Susan Harriman for Chairperson. Commissioner Harriman stated that she would like to carry on the work Chairperson Gusukuma's has been doing.

Motion 07-2-12-3 (Hansen/Studley): Moved, seconded and unanimously passed (5-0): that that Commissioner Harriman be elected Chairperson for the term beginning March 1, 2007.

Commissioner Harriman nominated Chairperson Gusukuma as vice-chair.

Motion 07-2-12-4 (Hansen/Studley): Moved, seconded and unanimously passed (5-0): that that Chairperson Gusukuma be elected Vice-Chair for the term beginning March 1, 2007.

XI. Minutes of the Commission meetings of January 8, 2007. (Discussion and possible action.)

Chairperson Gusukuma wanted to add gratitude to Kimon Manolius for his service as a commissioner. Commissioner Hansen mentioned discussion of globally canvassed forfeitures and requested that this be calendared in the future.

Public Comment:

None.

Motion 07-2-12-5 (Ward/Harriman): Moved, seconded and unanimously passed (5-0): that the Commission adopt minutes of the meetings of January 8, 2007, as amended.

XII. Executive Director's Report. An update of important Ethics Commission staff activities since the previous monthly meeting. (Discussion.)

Executive Director John St. Croix announced that commissioners would not be sworn in if they were delinquent in their filings. The Mayor conducts a monthly swearing-in ceremony, and two

Board members were delinquent in Statement of Economic Interest and Sunshine filings. These two members were notified, and filed within twenty-four hours.

Commissioner Hansen inquired about BDR and more education and publicity needed on the website.

Public comment:

None.

XIII. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

Public comment:

Charles Marsteller asked about the status of the budget. Executive Director St. Croix replied that there have been exchanges between the Mayor's Office but nothing definitive.

XIV. Adjournment.

Commissioner Harriman noted the appointment of and welcomed Commissioner Jamieenne Studley to the Commission.

Motion 07-2-12-6 (Harriman/Hansen): Moved, seconded and unanimously passed (5-0): that the Commission adjourn.

The meeting was adjourned at 9:04 p.m.

Respectfully submitted,

Kristian

Ongoco

Campaign Finance Officer/Lobbyist Administrator



**SAN FRANCISCO ETHICS COMMISSION
NOTICE OF REGULAR MEETING**

March 12, 2007 5:30 P.M.

and AGENDA

Room 408 City Hall

1 Dr. Carlton B. Goodlett Place, San Francisco

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I. Call to order and roll call.

II. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

III. Statements of Incompatible Activities. The Commission has adopted a common template for Statements of Incompatible Activities (SIAs). At this meeting, the Commission will consider draft SIAs for initial adoption. Representatives of departments under consideration may attend to make comment on SIAs and possibly answer questions from Commissioners. Departments under consideration include: Assessor/Recorder, Health Service System/Health Service Board, and Ethics Commission. The draft SIAs for these departments are available at the Commission office and on the Commission website. (Discussion and possible action.)

IV. Waiver Request. Niall Vignoles, Esq., a former Deputy City Attorney, is seeking a waiver of post employment restrictions under section 3.234 of the San Francisco Campaign and Governmental Conduct Code. Mr. Vignoles wishes to be able to contact the City Attorney's office regarding land use issues. While employed in the City Attorney's office, Mr. Vignoles worked on the Code Enforcement, Trial and Worker's Compensation teams. A copy of Mr. Vignoles' request and a staff memo are available at the Ethics Commission office and on the Commission website. (Discussion and possible action.)

V. Ordinance Amendment. Supervisor Daly has introduced a measure that would prohibit the use of City funds to design, produce, create, mail, send or deliver printed calendars (File 070124). This is an amendment to section 3.232 of the San Francisco Campaign and Governmental Conduct Code, which means it requires the support of four fifths of the Ethics Commission and two thirds of the Board of Supervisors. A representative from Supervisor Daly's office has been invited (but not confirmed) to answer questions. A copy of the legislation and the legislative

digest are available at the Commission office and at the Board of Supervisors web site. (Discussion and possible action.)

- VI. Staff Presentation on Audits and Public Finance. Recently staff members have made presentations on the Investigations and Enforcement processes and the Campaign Finance/Fines Collection processes. At this meeting, staff will present an overview of the Audit and Public Finance Processes as an informational tool for Commissioners. A staff report is available at the Commission office as well as the Commission website. (Discussion.)
- VII. Minutes of the Commission meetings of February 12, 2007. (Discussion and possible action.)
- VIII. Executive Director's Report. An update of important Ethics Commission staff activities since the previous monthly meeting. (Discussion.)
- IX. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.
- X. Adjournment.

Know Your Rights Under the Sunshine Ordinance

Government's duty is to serve the public, reaching its decision in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review. For more information on your rights under the Sunshine Ordinance or to report a violation of the ordinance, contact Frank Darby by mail to Administrator, Sunshine Ordinance Task Force, 1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco CA 94102-4689; by phone at 415 554 7724; by fax at 415 554 7854; or by email at saf@sfgov.org. Citizens interested in obtaining a free copy of the Sunshine Ordinance can request a copy from Mr. Darby or by printing Chapter 67 of the San Francisco Administrative Code on the Internet, <http://www.sfgov.org/sunshine/>.

The ringing of and use of cell phones, pagers and similar sound-producing electronic devices are prohibited at this meeting. Please be advised that the Chair may order the removal from the meeting room of any person(s) responsible for the ringing or use of a cell phone, pager, or other similar sound-producing devices.

This location is wheelchair accessible. In order to assist the City's efforts to accommodate persons with severe allergies, environmental illnesses, multiple chemical sensitivity, or related disabilities, attendees at public meetings are reminded that other attendees may be sensitive to various chemical-based products. Please help the City accommodate these individuals.

Individuals and entities that influence or attempt to influence local legislative or administrative action may be required by the San Francisco Lobbyist Ordinance [SF Campaign & Governmental Conduct, Code § 2.100] to register and report lobbying activity. For more information about the Lobbyist Ordinance, please contact the Ethics Commission at 25 Van Ness Avenue, Suite 220, San Francisco, CA 94102; telephone (415) 252-3100; fax (415) 252-3112 and web site www.sfgov.org/ethics

SF Ethics Commission

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March 12, 2007

(Approved April 9, 2007)

Minutes of the Regular Meeting of
The San Francisco Ethics Commission
March 12, 2007

Room 408, City Hall

I. Call to order and roll call.

Chairperson Harriman called the meeting to order at 5:33 p.m.

COMMISSION MEMBERS PRESENT: Susan Harriman, Chairperson; Emi Gusukuma, Vice-Chairperson; Eileen Hansen, Commissioner; Jamienne Studley, Commissioner; and Charles Ward, Commissioner.

STAFF PRESENT: John St. Croix, Executive Director; Mabel Ng, Deputy Executive Director; Shaista Shaikh, Assistant Deputy Executive Director; Richard Mo, Chief Enforcement Officer; and Paul Solis, Investigator/Legal Analyst.

OFFICE OF THE CITY ATTORNEY: Jon Givner, Deputy City Attorney.

OTHERS PRESENT: Phil Ting and Maurilio Leon, Assessor/Recorder's Officer; Bart Duncan, Health Service System; Niall Vignoles; Doug Comstock, Sunshine Ordinance Task Force; Tim Durning, Harvey Milk LGBT Democratic Club; Nilka Julio, IFPTE Local 21; Oliver Luby; Charlie Marsteller; and other unidentified members of the public.

MATERIALS DISTRIBUTED:

- San Francisco Office of the Assessor-Recorder Statement of

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Incompatible Activities

- San Francisco Health Service System/Health Service Board Statement of Incompatible Activities

- San Francisco Ethics Commission Statement of Incompatible Activities

- Proposed Schedule of SIA hearings for Ethics Commission Initial Approval

- Memorandum from Executive Director to Ethics Commission re: Waiver Request for Niall Vignoles, March 7, 2007; Waiver Requests from Niall Vignoles to Ethics Commission, February 28, 2007

- Legislative Digest re: Prohibition on Use of Public Funds for Calendars, January 22, 2007

- Memorandum from Executive Director to Ethics Commission re: Draft Overview of Audit Process and Public Financing Program, March 6, 2007

- Draft Minutes of the February 12, 2007 Regular Meeting of the Ethics Commission

- Executive Director's Report to the San Francisco Ethics Commission for the Meeting of February 12, 2007

- Memorandum from Executive Director to Ethics Commission re: Survey of Vendors Approved for Electronic Filing in California with the Secretary of State, March 6, 2007

Chairperson Harriman thanked Commissioner Gusukuma for her two years of service as Chairperson of the Commission.

II. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

Doug Comstock, Chair of the Sunshine Ordinance Task Force, stated that the Task Force refers two to three complaints regarding alleged violations of the Sunshine Ordinance annually to the Ethics Commission. He stated that the Task Force has been in existence for ten years and that the Commission has

never taken enforcement action on any of these referrals. He stated that the public needs to trust the Task Force and that the Commission has a responsibility to enforce these referrals. He stated that the Commission has sent the Task Force letters stating that the referrals were dismissed because the facts did not support a finding of a violation and that this was simply not correct. He stated that he would like to review the Commission's files on all the complaints referred by the Task Force.

Tim Durning, treasurer of the Harvey Milk LGBT Democratic Club, stated that one of the club's goals is to increase funding for the Commission and to televise Commission meetings. He stated that Supervisor Aaron Peskin is in favor of more money for the Commission and Assemblyman Mark Leno believed that the Commission has been underfunded for too long.

Oliver Luby, speaking on his own behalf, stated that the change to the Ethics Commission's SIA was good but it was not enough because it prevents Sunshine requests from being made and it also restricts other activities, including the right to attend meetings and the right to release public oral information under Administrative Code section 67.22. He suggested that the Commission include language explicitly stating that the SIA will not interfere with an employee's rights as it pertains to the Sunshine Ordinance.

Nilka Julio, Local 21 representative, stated that with regard to the SIA process, the City is opening itself up to liability because the City has violated Proposition E. She stated that pursuant to Charter Section 4.102 the SIAs should have gone to every board and commission and that this has not been the case. She stated that the uniform template makes sense but that department-specific items need to be vetted by the various affected commissions. She stated that she informed the City Attorney and Commission staff that the failure to seek formal

approval from those commissions is a violation of the Charter and that she may file an unfair labor practice charge or lawsuit.

III. Statements of Incompatible Activities. The Commission has adopted a common template for Statements of Incompatible Activities (SIAs). At this meeting, the Commission will consider draft SIAs for initial adoption. Representatives of departments under consideration may attend to make comment on SIAs and possibly answer questions from Commissioners. Departments under consideration include: Assessor/Recorder, Health Service System/Health Service Board, and Ethics Commission.

Assessor-Recorder

Assessor-Recorder Phil Ting stated that his department took the SIA very seriously and that he and his staff worked with Commission staff very closely. He stated that the SIA had been circulated among the management team, the Mayor's Office and shop stewards, and he urged the Commission to approve the SIA.

Heath Service System/Health Service Board

Bart Duncan, Executive Director of the Health Service System, stated that his department's review of the SIA dovetailed with the Controller's June 2005 audit of the department, and the Health Service Board had adopted the SIA.

Commissioner Hansen inquired about the level of staff involvement in the SIA process. Mr. Duncan responded that the Deputy City Attorney, the executive team and the board's rules committee, including all members of the committee, had reviewed the SIA over a fifteen-month period. He stated that his department only has 37 staff members, staff has a close working relationship, and that there was significant staff involvement in the development of the SIA.

Ethics Commission

Executive Director John St. Croix stated that some changes had been made to the SIA in response to concerns expressed by the

commissioners at the February meeting. He stated that although one staff member still has concerns, the SIA will continue to be reviewed and developed during the meet and confer process.

Commissioner Hansen stated that she may have questions regarding the SIA template and inquired when the Chairperson would like to receive public comment. Chairperson Harriman responded that she would ask for public comment after a motion had been made.

Commissioner Gusukuma noted that the SIA provision in Section III.A.1.b. is a significant change as it now allows commissioners and staff members to belong to political organizations. She requested clarification regarding this section. Deputy Executive Director Mabel Ng explained that this change was based on comments made by the commissioners at the February meeting. Commissioner Gusukuma inquired if this change was based on a First Amendment issue or if it was a policy decision by the Commission. Director St. Croix explained that there are separate rules that prohibit commissioners and staff from joining party organizations and that this SIA provision concerns organizations whose primary purpose is not political but who at times make endorsements in campaigns, such as the Women's Political Caucus.

Commissioner Gusukuma stated that in the past, commissioners avoided political events and did not take leadership roles in political organizations. She stated that this new provision would allow commissioners to be members of and hold leadership roles in an organization that regularly makes political endorsements regarding local candidates and ballot measures. Ms. Ng clarified that the new provision prohibits a commissioner from participating in an actual vote regarding any such endorsement.

Deputy City Attorney Jon Givner explained that this SIA

provision provides that if a commissioner participates in an actual vote, the commissioner is committing a violation for which he or she can be prosecuted by the Ethics Commission, the District Attorney or the City Attorney. He stated that as commissioners, the Commission may still decide as a matter of policy that commissioners should not participate in certain activities.

Commissioner Hansen stated that she concurred with Commissioner Gusukuma. She stated that she found it interesting that the SIA provisions allow commissioners to hold leadership positions in political organizations but at the same time prohibit commissioners from contributing money to those organizations. She stated that even though a commissioner would not be participating in a vote, if a commissioner was an officer then he or she would arguably have influence on the process that is created and the people who are invited to speak to the group. She stated that this was potentially a slippery slope and it would be difficult to be clear about what was permissible.

Commissioner Ward inquired about the meaning of "membership" in an organization and if membership dues constitute a contribution to an organization. Deputy City Attorney Givner clarified that the Charter provision prohibits making donations to political organizations. He referenced the Charter provision:

"No member or employee of the Ethics Commission may participate in any campaign supporting or opposing a candidate for City office or a City ballot measure. For the purposes of this section, participation in a campaign includes, but is not limited to, making contributions or soliciting contributions to any committee within the Ethics Commission's jurisdiction, publicly endorsing or urging endorsement of a candidate or ballot measure, or participating in decisions by organizations to

participate in a campaign."

Mr. Givner stated that this provision would not prohibit a commissioner from being a member in an organization or from paying membership dues.

In response to Commissioner Ward's question about membership dues, Commissioner Hansen stated that when she sought advice regarding allowable activities during her campaign for supervisor, she was advised that she could not pay dues to an organization that made political endorsements and that if such an organization had a firewall and received contributions that could be firewalled from funds that would go towards supporting a campaign, then she could contribute to that organization. She explained that in her way of thinking, she was prohibited from belonging to an organization that made endorsements, and that if there was no firewall in an organization, she could not contribute money to that organization. She stated that to be a member, let alone an officer or to be involved in policy-making, felt very inappropriate.

Commissioner Gusukuma stated that she had received the same advice. She stated that from a staff member's perspective, if an investigator was a member of an organization and that organization was under investigation, it would call into question the staff member's neutrality.

Public Comment:

Charlie Marsteller suggested that the Commission follow the Common Cause volunteer guidelines, which state that if an activity is regulated by the Political Reform Act, then individuals cannot participate in that activity. He stated he supported Mr. Luby's suggestion that the MOU should not be the only exception and that the SIA should contain a broader exception for Sunshine activities.

Ms. Julio stated that she affirmed Mr. Duncan's comments that

the Health Service Board adopted his department's SIA and that she supported the open process and good government. She stated that the Health Service Board should be used as a model.

Commissioner Ward asked if staff isn't responsible for providing information to their boards and commissions. Ms. Julio stated that the Planning Commission and the Building Commission have not reviewed their respective SIAs and that according to the Department of Human Resources only fourteen boards or commissions have reviewed their respective SIAs.

Commissioner Hansen stated that it was her practice to ask each departmental speaker to talk about the SIA process and that she has repeatedly stated that she wants the process to be transparent. She stated that the Department of Building Inspection's SIA had been forwarded to the Building Inspection Commission more than once. Ms. Julio responded that Acting Director Amy Lee had forwarded an informational report but not the actual version of the SIA. She stated that while one Building Inspection Commissioner supported the SIA the Building Inspection Commission itself did not adopt the version of the SIA that came to Ethics.

Deputy Executive Director Ng stated that the draft provision was made in response to comments received from Commissioners at the last meeting; thus, she asked the Commissioners to provide guidance on this provision. Executive Director St. Croix suggested that the Commissioners e-mail their recommendations to him.

Commissioner Hansen stated that she wanted to make Sunshine part of the SIA template and she wanted to affirm that the template is being reviewed. Executive Director St. Croix responded that revisions have been made based on the Sunshine Ordinance Task Force recommendations and that the meet and confer process on the template itself is closed.

Commissioner Hansen inquired if it was possible to make template changes at this point. Deputy Executive Director Ng stated that staff will be bringing the template back for the Commission's consideration after the meet and confer and added that she hopes the Commission will not make additional changes that will require additional meet and confer sessions on the template.

Motion 07-03-12-1 (Gusukuma/Harriman): Moved, seconded and unanimously passed

(5-0): that the Commission initially adopt the SIAs of the Assessor-Recorder and the Health Service System/Health Service Board.

IV. Waiver Request. Niall Vignoles, Esq., a former Deputy City Attorney, is seeking a waiver of post employment restrictions under section 3.234 of the San Francisco Campaign and Governmental Conduct Code. Mr. Vignoles wishes to be able to contact the City Attorney's office regarding land use issues. While employed in the City Attorney's office, Mr. Vignoles worked on the Code Enforcement, Trial and Worker's Compensation teams.

Niall Vignoles stated that he was a former Deputy City Attorney and he had stopped working full-time for the City since April 2006 and he has been working part-time on one case for the past eight months. He explained that he now worked for a small firm specializing in land use law and that he was seeking a waiver from the rule that prohibits him from having any contact with any member of the City Attorney's Office. Commissioner Ward inquired as to the length of the ban. Mr. Vignoles responded that the ban was for one year. He explained that he permanently severed his employment with the City in December 2006 but he stopped working full-time in April 2006.

Commissioner Gusukuma inquired as to the subject matter of

Mr. Vignoles' proposed communications with the City Attorney's Office. Mr. Vignoles responded that his current work with his law firm involved permit applications, planning and review for conditional permits, code enforcement actions, which usually involves some contact with the Planning Department. He cited projects involving the Executive Park commercial property by Candlestick as an example of his firm's work. He stated that his law firm has not, historically, done any litigation.

Commissioner Gusukuma inquired about the two previous waiver requests granted to former Deputy City Attorneys that the Executive Director referenced in his memorandum to the Commission. Executive Director St. Croix stated that the waivers were related to representation of children and the mentally disabled in child dependency and probate cases. Commissioner Hansen stated that the one-year ban was reasonable because it protects the integrity of the decision-making process. She stated that she was uncomfortable with basing the decision to grant a waiver on the granting of a previous waiver request and that she would vote against this particular waiver request. She stated that Mr. Vignoles knew about the one-year ban.

Commissioner Gusukuma stated that in the past, the Commission granted waivers because the ultimate decision would be made by a judge and therefore the possibility of undue influence was mitigated; however, she did not see the same protection in the case at hand.

Commissioner Studley stated that she was sympathetic to Commissioner Hansen's points about waivers and the logic behind them. She inquired if Mr. Vignoles did not completely sever his employment with the City Attorney's Office due to the City's request or if because he offered to continue providing his services. Mr. Vignoles responded that he offered to continue working part-time at the City Attorney's office because he was

in the middle of a bench trial. He explained that he worked for the City two days a week for a period of eight months.

Chairperson Harriman noted that Mr. Vignoles had a request in the alternative to base the one-year ban starting from the time that he ceased full-time employment with the City.

Commissioner Gusukuma inquired if Mr. Vignoles was an independent contractor or a City employee during the eight-month period ending in December 2006. Mr. Vignoles responded that he was paid on a hourly basis as a City employee.

Executive Director St. Croix noted that it was not only the requestor of the waiver who had a duty to abide by the waiver, but City employees working with the requestor have the same duty. Mr. Vignoles stated that members of the California Bar have a duty to report bad faith and breaches committed by other attorneys.

Commissioner Ward stated that he agreed with Commissioner Hansen's point of view. He stated that in general, in going forward with future requests, he will not vote to grant waivers except in exceptional circumstances. He stated that the Commission had been too liberal in granting these waiver requests, he did not find this case to have any exceptional circumstances, and that he would not vote in favor of granting this waiver.

Public Comment:

Mr. Marsteller stated that the Commission did an appropriate review of this waiver request. He stated that the original intent of the Charter amendment was a prohibition involving insider knowledge and that the intent was to avoid the appearance of something that does not look right. He stated that exceptions to the one-year ban should not consume the rule itself.

Chairperson Harriman stated that no motion had been made, so the Commission did not grant Mr. Vignoles' waiver request.

V. Ordinance Amendment. Supervisor Daly has introduced a measure that would prohibit the use of City funds to design, produce, create, mail, send or deliver printed calendars (File 070124). This is an amendment to section 3.232 of the San Francisco Campaign and Governmental Conduct Code, which means it requires the support of four fifths of the Ethics Commission and two thirds of the Board of Supervisors. Executive Director St. Croix noted that this agenda item would be moved to a future meeting. He explained that several departments, including the Public Utilities Commission, the Port and Reproduction Services, expressed interest in commenting on this proposed amendment.

Public Comment:

None.

VI. Staff Presentation on Audits and Public Finance. Recently staff members have made presentations on the Investigations and Enforcement processes and the Campaign Finance/Fines Collection processes. At this meeting, staff will present an overview of the Audit and Public Finance Processes as an informational tool for Commissioners.

Assistant Deputy Director Shaista Shaikh referenced her March 6, 2007 memorandum and gave a brief overview of the audit and public finance processes, including the following topics: 1) who is subject to audit; 2) eligibility criteria and disbursement amounts for the Mayoral and Board of Supervisors public financing program; 3) expenditure ceilings and supplemental reports; and 4) a description of the actual audit process.

Public Comment:

Mr. Marsteller inquired if there would be a review of the 2006 public financing process at a future Commission meeting.

VII. Minutes of the Commission meeting of February 12, 2007. Commissioners Hansen, Gusukuma and Studley suggested minor amendments to the draft minutes to reflect the content

of discussion more accurately.

Commissioner Studley inquired as to the best method to convey typographical errors to staff. Chairperson Harriman responded that the Commissioners should give such corrections to Commission staff prior to the meeting at which the minutes would be considered.

Public Comment:

None.

Motion 07-03-12-2 (Studley/Gusukuma): Moved, seconded and unanimously passed (5-0): that the Commission adopt minutes of the meeting of February 12, 2007, as amended.

VIII. Executive Director's Report. An update of important Ethics Commission staff activities since the previous monthly meeting. Executive Director St. Croix welcomed the Commission's newest investigator/legal analyst, Paul Solis. He noted the following items in the Executive Director's Report: 1) there will be in Interested Persons Meeting on March 29 regarding the Online Filing System; 2) the CFRO regulations will be presented at the next meeting; 3) he met with the Retirement Board and the Airport regarding gifts from restricted sources; 4) there has been some progress made with regard to Bureau of Delinquent Revenues referrals, and staff continues to work with them; 5) the Commission was on track to reach its projected revenues for the current fiscal year; 6) the Executive Director Report will contain a chart of outstanding assessed fines four times per year; 7) the deadlines for filing Statements of Economic Interests and Sunshine Declarations is April 2; and 8) staff has conducted two training sessions at DBI and four more are scheduled.

Commissioner Hansen made the following requests: 1) attach the NRF list in the Executive Director's Report; 2) put all lists regarding delinquent filers on the website; 3) a report on the global canvass issue; 4) calendar a discussion about what to do

with delinquent filers; 5) ask the Mayor's liaison to help the Commission with its BDR fines collection referrals; 6) ask BDR for a monthly status report; and 7) clarify what monies that the Commission lost in BDR referrals due to statute of limitations issues.

Executive Director St. Croix stated that with regard to the global canvass issue, the letters referenced by Commissioner Hansen will not be sent and any fines will be waived. He explained that the particular law was new and has never been enforced. Commissioner Hansen inquired why the Commission could not begin to enforce this law and she stated that she was not comfortable waiving these fines.

Commissioner Gusukuma requested a copy of the Commission-BDR MOU.

Public Comment:

Mr. Marsteller thanked staff for their work on the CFRO regulations and for holding the Interested Persons Meeting regarding the regulations. He suggested that the Commission use generic language to describe potential vendors. He stated that the global canvass issue should be calendared for discussion by the Commission.

IX. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

None.

X. Adjournment.

Motion 07-03-12-3 (Gusukuma/Hansen): Moved, seconded and unanimously passed (5-0): that the Commission adjourn.

The meeting was adjourned at 7:01 p.m.

Respectfully submitted,

Richard Mo

Chief Enforcement Officer

Ethics Commission



25 Van Ness Ave., Suite 220
San Francisco, CA 94102
Phone 252-3100 Fax 252-3112

**SAN FRANCISCO ETHICS COMMISSION
NOTICE OF REGULAR MEETING**

April 9, 2007 5:30 P.M.

and AGENDA

Room 408 City Hall

1 Dr. Carlton B. Goodlett Place, San Francisco

9:05 a.m. not
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- I. Call to order and roll call.
- II. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.
- III. Statements of Incompatible Activities. The Commission has adopted a common template for Statements of Incompatible Activities (SIAs). At this meeting, the Commission will consider draft SIAs for initial adoption. Representatives of departments under consideration may attend to make comment on SIAs and possibly answer questions from Commissioners. Departments under consideration include: the Airport Commission, Department of Human Resources and the Taxi Commission. The draft SIAs for these departments are available at the Commission office and on the Commission website. (Discussion and possible action.)
- IV. Regulations on Gifts from Restricted Sources. The Commission and the Board of Supervisors have previously reduced the annual limitation on gifts from restricted sources from \$100 to zero under section 3.216 of the Campaign and Governmental Conduct Code. The amendment requires the Ethics Commission to adopt implementing regulations, including regulations to exempt certain gifts from the scope of the prohibition. These regulations will govern that change. The proposals will also make changes to Regulation 3.216(c) to increase the exemption of gifts from subordinates from \$20 to \$25; and to Regulations 3.224-1 and 3.234-5 to clarify that a person does not act with intent to influence a governmental decision when the action the person is involved with is solely ministerial, secretarial, manual or clerical. A copy of the proposed regulations will be available in advance at the Commission office as well as the Commission website. (Discussion and possible.)
- V. Lobbyist Ordinance Discussion – At the June 2007 meeting, the Commission will discuss possible changes to the Lobbyist Ordinance. Preliminary to that, the City Attorney's office has been studying the operations of Lobbyist Ordinance measures in other jurisdictions. Staff will present an overview of the findings at this meeting

as a preliminary discussion of possible ideas for implementation in San Francisco. (Discussion.)

- VI. On-Line Filing System. The Commission's On-Line Filing System (OLFS) is dated and needs to be replaced due to several factors, including that DTIS will not be supporting any Lotus-based programs in the upcoming fiscal year. Staff has been researching possible alternatives for online filing. On March 29, staff held an interested persons meeting. Previously, staff provided preliminary information regarding a comparison between OLFS and other possible online filing systems. At this meeting, staff will provide additional information regarding OLFS and make a recommendation for a replacement system. A staff report will be available at the Commission office and on the Commission website. (Discussion and possible action.)
- VII. Template of Statements of Incompatible Activities. Commission staff has been working on changes to the template previously adopted by the Commission as part of the meet-and-confer process and as a result of ongoing discussions with City departments, boards and commissions. Staff's proposed changes in response to the concerns raised by the unions during the meet and confer process and by City boards and Commissions during ongoing discussions will be considered and possibly adopted at this meeting. A staff memo will be available in advance at the Commission office and on the Commission website. (Discussion and possible action.)
- VIII. CFRO Regulations. Consideration of regulations to implement new provisions and to clarify other provisions of the Campaign Finance Reform Ordinance, San Francisco Campaign and Governmental Conduct Code section 1.100 et seq. ("CFRO"). Previously, the Ethics Commission and Board of Supervisors adopted a series of changes to the CFRO. The new amendments made several changes to the CFRO relating to, among other things, training for treasurers (§ 1.107); electronic filing of disclosures (§ 1.112); contributions by corporations (§ 1.114); payments of accrued expenses (§ 1.118); contributions by contractors doing business with the City, the Unified School District and Community College District (§ 1.126); supplemental reporting (§ 1.135); and extension of deadlines that fall on weekends and holidays (§ 1.172). Proposed regulations will also clarify candidate contribution trust accounts (§ 1.108); set forth the formula for adjusting expenditure ceilings (§ 1.130); clarify requirements to receive public financing (§ 1.140); identify purposes for which public funds may be used after an election (§ 1.148); and conform existing regulations to other technical changes in the law. A copy of the proposed regulations will be available in advance at the Commission office as well as the Commission website. (Discussion and possible action.)
- IX. Minutes of the Commission meetings of March 12, 2007. (Discussion and possible action.)
- X. Executive Director's Report. An update of important Ethics Commission staff activities since the previous monthly meeting. (Discussion.)

- XI. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.
- XII. Items for future meetings. Commissioners may propose items for future agendas and the Commission may determine the priority of these items. (Discussion.)
- XIII. Adjournment.

Know Your Rights Under the Sunshine Ordinance

Government's duty is to serve the public, reaching its decision in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review. For more information on your rights under the Sunshine Ordinance or to report a violation of the ordinance, contact Frank Darby by mail to Administrator, Sunshine Ordinance Task Force, 1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco CA 94102-4689; by phone at 415 554 7724; by fax at 415 554 7854; or by email at sotf@sfgov.org. Citizens interested in obtaining a free copy of the Sunshine Ordinance can request a copy from Mr. Darby or by printing Chapter 67 of the San Francisco Administrative Code on the Internet, <http://www.sfgov.org/sunshine/>.

The ringing of and use of cell phones, pagers and similar sound-producing electronic devices are prohibited at this meeting. Please be advised that the Chair may order the removal from the meeting room of any person(s) responsible for the ringing or use of a cell phone, pager, or other similar sound-producing devices.

This location is wheelchair accessible. In order to assist the City's efforts to accommodate persons with severe allergies, environmental illnesses, multiple chemical sensitivity, or related disabilities, attendees at public meetings are reminded that other attendees may be sensitive to various chemical-based products. Please help the City accommodate these individuals.

Individuals and entities that influence or attempt to influence local legislative or administrative action may be required by the San Francisco Lobbyist Ordinance [SF Campaign & Governmental Conduct, Code § 2.100] to register and report lobbying activity. For more information about the Lobbyist Ordinance, please contact the Ethics Commission at 25 Van Ness Avenue, Suite 220, San Francisco, CA 94102; telephone (415) 252-3100; fax (415) 252-3112 and web site www.sfgov.org/ethics

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SF Ethics Commission

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April 9, 2007

(Approved May 14, 2007)

Minutes of the Regular Meeting of
The San Francisco Ethics Commission
April 9, 2007

Room 408, City Hall

I. Call to order and roll call.

Chairperson Harriman called the meeting to order at 5:30 p.m.

COMMISSION MEMBERS PRESENT: Susan Harriman,
Chairperson; Jamiene Studley, Commissioner; and Charles
Ward, Commissioner.

Vice-Chairperson Emi Gusukuma and Commissioner Eileen
Hansen were excused.

STAFF PRESENT: John St. Croix, Executive Director; Mabel Ng,
Deputy Executive Director; Paul Solis, Investigator/Legal
Analyst; Steven Massey, Information Technology Officer.

OFFICE OF THE CITY ATTORNEY: Jon Givner, Deputy City
Attorney.

OTHERS PRESENT: Farbod Pirouzmand, Local 21; Jean
Caramatti, Kevin Kone, Airport Commission; Jim Horan, Jennifer
Johnston, Christina Fong, Department of Human Resources;
Clare Murphy, Norm Nickens, Retirement Board; Brad Benson,
Port Authority; Pepper Austin, City Attorney's Office; Anita
Mayo; Joe Lynn; Oliver Luby; Charlie Marsteller; and other
unidentified members of the public.

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- San Francisco Airport Commission Statement of Incompatible Activities
- San Francisco Department of Human Resources Statement of Incompatible Activities
- San Francisco Taxi Commission Statement of Incompatible Activities
- San Francisco Department of Child Support Services Statement of Incompatible Activities
- SIA Template - Meet & Confer Union Proposals and Ethics staff Recommendations
- SIA Meet & Confer Schedule
- Memorandum from City Attorney's Office to Ethics Commission re: San Francisco Lobbyist Ordinance, April 2, 2007
- Memorandum from Executive Director to Ethics Commission re: Development of a new electronic filing system, April 9, 2007
- Memorandum from Executive Director to Ethics Commission re: Proposed Regulations related to Restricted Sources and other Provisions, April 5, 2007
- Memorandum from Executive Director to Ethics Commission re: Proposed Amendments to SIA Template, April 5, 2007
- Memorandum from Executive Director to Ethics Commission re: Proposed Regulations to Campaign Finance Reform Ordinance, April 5, 2007
- San Francisco Campaign & Government Conduct Code
- Draft Minutes of the March 12, 2007 Regular Meeting of the Ethics Commission
- Executive Director's Report to the San Francisco Ethics Commission for the Meeting of April 9, 2007

II. Public comment on matters appearing or not appearing on the agenda that is within the jurisdiction of the Ethics Commission.

Joe Lynn stated that the issue with lobbyist reform databases is first considering what data one might want to collect. He

suggested contacting Bob Stern at the Center for Governmental Studies for an example of what data should be collected. Mr. Lynn also referenced a San Francisco Chronicle article involving the Community College and he stated that the Ethics Commission should look into the matters presented in the article.

Farbod Pirouzmand stated he had a comment on an issue that would be coming up later in the meeting and indicated that he could wait until the item was addressed later in the meeting to comment.

III. Statements of Incompatible Activities

Airport Commission

Jean Caramatti, on behalf of the Airport Commission, stated that the drafting of the Statement of Incompatible Activities ["SIA"] for the Airport Commission began at the request of the Ethics Commission in 2004. The Airport then sent a draft to Ethics in July 2004 and has since met with the Ethics Commission Executive Director and Deputy Director in 2007 to make changes to the SIA. Ms. Caramatti stated that the new SIA will be in conjunction with a set of agency directives dating back to 1983 that the agency had already established. These directives serve to prohibit certain activities by Airport employees.

Commissioner Ward inquired about restrictions listed in the proposed SIA during selection processes. He inquired if the restriction should be broader. Ms. Caramatti stated that the change could be made to reflect the Commissioner's concerns. Deputy City Attorney Jon Givner stated that the language mentioned by Commissioner Ward appeared in the amended template that the Commission would consider later in the meeting.

Commissioner Harriman noted a grammatical issue in the SIA and Ms. Caramatti accepted the suggestion.

Department of Human Resources

Jim Horan, on behalf of Department of Human Resources ["DHR"], stated that because he recently became Acting Director of DHR he is not totally familiar with this SIA, but that he has staff on hand to answer any questions. He explained the history of SIAs at DHR, stating certain provisions were already in place in the department. Mr. Horan stated that DHR staff met with Ethics staff early in 2007 and made appropriate revisions to the SIAs. The current SIA is intended to cover all DHR employees.

Commissioner Studley inquired about some vagueness in the first clause of section III.A.1.B of the draft SIA. Deputy Director Ng suggested deleting the language in question. Mr. Horan accepted the suggestion.

Taxi Commission

Because no representative of the Taxi Commission was present, Commissioner Harriman stated that the Taxi Commission's SIA would be considered later in the meeting.

Public Comment

None.

Motion 07-04-09-1 (Studley/Ward): Moved, seconded and unanimously passed (3-0) that the Commission initially adopt the SIAs for the Airport Commission and the Department of Human Resources, as amended.

IV. Regulations on Gifts from Restricted Sources

Deputy Director Ng stated that in September 2006, the Commission approved an amendment to San Francisco Campaign and Government Conduct Code section 3.216, which was adopted by the Board of Supervisors. This amendment required the Commission to adopt implementing regulations. She stated that Ethics staff has prepared a draft of these regulations in addition to other amendments to existing regulations. Deputy Director Ng explained each regulation and

noted that several of the changes were made in response to meetings with the Airport Commission, Retirement Board and Port Authority.

Airport Commission

Kevin Kone, Assistant Deputy Director, stated that he and his team manage all the outstanding debt of the Airport Commission. On a regular basis, his team works with investment bankers in order to get the best interest rates available for infrastructure projects. This work includes consultation over dinners, lunches and other events. Mr. Kone stated the relationship with the banks includes information that is germane to getting the best results for the City. His work frequently requires him to go to New York and other conferences where dinners are given to him while discussions about business take place.

Commissioner Ward inquired about the amount the bankers spend on hospitality in connection with meetings with Airport employees. Commissioner Ward also inquired about why the Airport Commission doesn't pay for the dinners itself.

Mr. Kone stated that the Airport Commission is aware of all the state gift limitations. Employees try to conduct meetings in the office, but sometimes bankers require the meetings to be held over dinner. He further stated that banks are often required to do business in this fashion. Mr. Kone also stated that the dinners all fall under the state limits and that he would take Commissioner Ward's suggestions that the Airport Commission pay for these meals into consideration.

Commissioner Studley asked Mr. Kone if he was in favor of the current rules and if the meetings over dinner are just with the Airport Commission or other individuals. Mr. Kone stated he is in favor of the rules as they are written and the meetings with bankers are usually only with Airport employees.

Retirement Board

Clare Murphy, Executive Director of the Employees' Retirement System, stated that she is in favor of the proposed rules drafted by Ethics staff. She gave a background of what the retirement system does and explained that sometimes over dinners, with various partnerships with whom the board shares risk, certain information is exchanged that is necessary to carry out the business of the board. Ms. Murphy stated that all board employees are aware of all state laws regarding gifts but that these meetings are truly business functions where the information discussed ultimately benefits the City.

Commissioner Ward inquired how the City's investment portfolio would be affected by requiring the City to pay for meals of Retirement Board employees at meetings with partners. Ms. Murphy responded that there would be a practical issue with implementation in addition to the issue of the investors already planning to pay for the meal. She also stated that assets wouldn't be affected but certain relationships would be affected and the City may be rejected from these relationships.

Executive Director St. Croix stated that these rules are in place for these specific agencies in order for them to compete with other business and other cities. Commissioner Harriman concurred.

Commissioner Ward inquired about the existing budget at the Retirement Board for hospitality. Ms. Murphy responded there was no expense account budget, but a travel budget.

Commissioner Studley stated that although she agreed with Commissioner Ward, she was concerned that fewer people may be able attend the dinners and events if employees were forced to pay for their own meals. In addition, she stated it may amount to a poor public perception if tax dollars were being used for City employees' dinners to discuss City work. Ms. Murphy agreed that these issues are significant and reiterated that these events are strictly for City business.

Port Authority

Brad Benson, special projects manager with the Port Authority, stated that he is in favor of the Ethics staff draft regulation as it relates to the Port. Mr. Benson stated that the Port Authority is an enterprise agency with no tax dollars used to fund it. He stated that most of its revenue comes from non-maritime projects and that maritime projects are typically money-losing situations. However, the Port continues to attempt to compete in this market by inviting cruise ship companies to come to the Port. This often involves dinners in attempts to build relationships with the industry. He stated that it is also good for the City because these ships bring in tourist money. Mr. Benson also noted that in certain contract situations, as the rules are written currently, meals given to Port employees during various events would be prohibited. He advocated for the rules to be nuanced to allow meals at appropriate times. Commissioner Harriman noted a letter handed to the Commission and Ethics staff by Mr. Benson. She asked if the letter reflects the language in the draft regulation. Mr. Benson responded that he believed it did.

Commissioner Studley stated that the goal is to prohibit undue influence on City employees. But the meals given to employees of these agencies seem to be related to the work of these agencies. She stated that the approach should be about "what is a gift?" and not about situations where employees are doing their job in a typical practice and where the agency knows about it.

Commissioner Ward stated that he did not doubt that the employees are doing their job. He stated that he was concerned about bankers controlling the relationships by making hospitality decisions financially beyond what City employees would normally choose. Commissioner Ward stated that he did not believe these businesses would turn away City

business just because City employees stopped accepting meals. Commissioner Studley inquired about a definition within a proposed regulation and asked staff how the gift restriction could affect a person's right to public testimony. Deputy Director Ng responded that there is a concern that an individual may not provide public testimony if he or she will be deemed a restricted source. Commissioner Studley inquired if there was a linguistic solution to the issue. Commissioner Harriman stated she thought the language should be clarified but that the adoption of new language should be put off until another time. Deputy City Attorney Givner explained that the Commission could adopt a portion of the regulations, which would be submitted the following day to the Board of Supervisors. He also addressed Commissioner Studley's inquiry regarding the definition of "gift" and stated that the ordinance incorporates the definition in California state law, and that the Commission cannot change the definition by regulation.

Commissioner Ward inquired about the meaning of terms in section 3.216(b)-2(e). Deputy Director Ng responded that the definitions come from the California Fair Political Practices Commission regulations. Commissioner Ward specified that he was concerned in particular with the term "clerical" in the regulation. Deputy Director Ng responded that she believed the definition to be one involving non-discretionary activities. Commissioner Harriman clarified which regulations would be voted upon and which regulations would be considered at a different time to reflect concerns of the Commissioners. Commissioner Ward made a motion to adopt the regulations, with the exception to 3.216(b)-2(e), section 3.216(b)-2(f), section 3.216(b)-5(d), and the language submitted by the Port. Commissioner Studley seconded the motion.

Public Comment:

Charlie Marsteller stated that in the Ethics Commission meeting

agenda there was a failure to insert "action" after "discussion and possible" in connection with the adoption of regulations regarding gifts from restricted sources. He inquired if this raised Brown Act concerns.

Commissioner Harriman asked Deputy City Attorney Givner if this typo affected action under the Brown Act. Mr. Givner stated that it does. Executive Director St. Croix stated that action on this agenda item would be moved to next month. Anita Mayo expressed her concern that the exception for widely attended events referred only to professional or educational events, but many such events are not professional or educational, such as events to promote the Olympic Games. She asked the Commission to delete the language pertaining to her concern.

V. Lobbyist Ordinance Discussion

Executive Director St. Croix stated that the Commission would be considering possible reforms to the Lobbyist Ordinance at the June meeting and that the City Attorney had done some background research on the matter via a report issued to the Commission and Ethics staff by intern Pepper Austin.

Commissioner Harriman thanked the City Attorney's Office for their work.

Public Comment:

Mr. Marsteller stated that he had gone through these issues previously and that the issues are complex and thanked the City Attorney for their work.

Oliver Luby, on his own behalf, thanked the City Attorney for their work and stated that he wished to see comparisons of the definition of lobbyist from other jurisdictions.

VI. Online Filing System

Executive Director St. Croix explained the background of the online filing system. He asked the Commission to endorse the staff recommendations pertaining to implementing the online

filing system. Mr. St. Croix thanked Information Technology Officer Steven Massey for the work he has done on the matter.

Public Comment:
None.

Motion 07-04-09-2 (Studley/Ward): Moved, seconded and unanimously passed (3-0) that staff recommendations be accepted to outsource software development of online filing to a private vendor.

VII. Template of Statements of Incompatible Activities

Deputy Director Ng stated that in 2006 the Ethics Commission adopted a template for SIAs for Ethics staff to use in meetings with City agencies. Ms. Ng explained that the Commission staff has held various meetings with unions and City departments and stated that certain changes have been made to the template for consideration by the Commission. She stated that these changes clarify the SIAs and noted that Christina Fong from DHR had prepared a chart of union recommendations for changes and staff's responses on the template. Deputy Director Ng also referenced a change to the SIA template to reflect concerns articulated by Commissioners Studley and Ward when considering the Airport Commission's SIA.

Commissioner Harriman thanked Christina Fong and Ethics staff for their work on the SIAs.

Commissioner Ward asked if the Commission's adoption of the revised template would apply to all SIAs. Deputy Director Ng stated that if the Commission approves the changes and adopts the revised template, staff will take the SIAs already approved by the Ethics Commission and re-work the template language. Commissioner Ward asked how the Commission would know that provisions not approved by the Commission in a specific SIA would be available to be reviewed by the Commission. Ms. Ng responded that the Commission has already preliminarily approved 25-30 SIAs and that the language under

consideration only affects the template language and not department-specific provisions. She also stated that department-specific provisions in SIAs that have yet to be reviewed by the Commission will still be available to be changed.

Commissioner Ward stated that a particular issue in the past involved the Department of Building Inspection ("DBI") and that Commissioners took issue with certain language in that department's SIA. He inquired that if the Commission approves the new template, would the contentious issues involving specific departments be resolved.

Deputy City Attorney Givner responded that some universal issues that apply to DBI and other departments would be resolved by the adoption of a revised template. He stated that the language not included in the template that is within the department-specific SIA will still be reviewable by the Commission. In addition, Mr. Givner stated that certain departments may change the template language in their department-specific SIAs, subject to approval by the Commission.

Executive Director St. Croix stated that template issues were coming up repeatedly at meetings with departments and unions, so staff thought that putting the template in front of the Commission would be the best course of action.

Commissioner Ward inquired whether or not the Commission should take action without a full Commission present.

Commissioner Harriman responded that it is important that the Commission move forward on the matter for implementation as long as a quorum is present.

Public Comment:

Farbod Pirouzmand, on behalf of Union Local 21, stated that he has been working extensively with Ethics staff and the City Attorney's Office. He thanked the Commission but stated that

the goal in formulating these SIAs is to balance the public good with employees' rights. Mr. Pirouzmand stated that if the template changes are adopted, union employees may request further meet and confers because it is possible that a substantive change to their contract rights may occur. Mr. Pirouzmand referenced section III.C.4 of the proposed template and stated that as written, the template does not require department heads to notify all employees when an activity is deemed incompatible for a particular employee. He stated that this affects working conditions and department heads determining that an activity is prohibited should inform all union employees of such a decision.

Commissioner Studley asked Mr. Pirouzmand if the absence of language he took issue with was added, what effect it would have. Mr. Pirouzmand responded that without a change in the proposed template language, unions might not know about rights affected by working conditions.

Mr. Luby stated that he has made several requests for changes in SIAs previously and takes issue with several aspects of the current SIA template. He also stated that as currently written the template does not allow him, as an Ethics Commission employee, to discuss certain issues with the public at certain times and that this should be a disciplinary function and not something that could subject him to fines. Mr. Luby then referenced a section of the Sunshine Ordinance as a possible guide.

Mr. Marsteller stated that he believed provisions of the Sunshine Ordinance need to be incorporated into the SIAs. Mr. Marsteller stated that rights created by Proposition E need to be addressed. He stated that progress has been made in the SIA process for the benefit of the public and that courts would accept the work done on the matter and that he expects many changes in the future.

Motion 07-04-09-3 (Studley/Ward): Moved, seconded and unanimously passed (3-0) that the Commission adopt the new SIA template amendments recommended by Ethics staff.

VIII. Campaign Finance Reform Ordinance Regulations
Deputy Director Ng stated that the proposed regulation amendments implement 2006 changes to the Campaign Finance Reform Ordinance ("CFRO"). She stated that Ethics staff has held three interested persons meeting to assess which provisions need regulatory clarification. Ms. Ng then explained the regulation approval process from the Commission to the Board of Supervisors in addition to the time table for implementation. She stated that she hopes the Commission would adopt the changes to the regulations in time for the November elections.

Commissioner Harriman inquired about the difference between two provisions in the regulations, one current and one newly proposed, regarding the Executive Director's role in calculating amounts of supportive funds, and inquired about the language of the regulation as amended.

Deputy Director Ng explained that the difference between the two provisions is that the current regulation discusses the Executive Director's role in calculating contribution and expenditure amounts via paper filings by candidates and committees. However, she stated that the new regulation would allow the Executive Director to go beyond the paper filings in certain situations to calculate contributions and expenditures. Deputy City Attorney Givner stated the regulation was not indefinite and that the goal of the new regulation is to clarify that the Executive Director has authority to take into account spending that may not exactly fit into existing definitions of independent expenditures and contributions but that effectively increase the total supportive funds to a candidate.

Commissioner Harriman noted a grammatical error in the regulations (adding a period to section 1.126-1(c)) and inquired about clarification on section 1.126-1(b). Deputy Director Ng and Deputy City Attorney Givner explained that the section's prohibition on contributions does not extend to members of the board of directors of an entity that is, for instance, a 20 percent owner of the party or prospective party to the contract (i.e., directors of a company that owns a company in contract negotiations with the City).

Commissioner Harriman inquired about the language of a proposed online filing regulation (section 1.135-1(b)). Deputy Director Ng stated that since submission of the proposal to the Commission, staff had internal discussions and thus recommended deletion of the proposed amendment.

Commissioner Studley inquired about whether language regarding training workshops was intended to read "within 30 days of the last day for filing nomination papers" or "30 days before the last day for filing nomination papers." Deputy Director Ng stated that the regulation language was meant to be worded "within" because staff wants flexibility in implementing the training workshop dates. In response to Commissioner Studley's question, Deputy City Attorney Givner and Executive Director St. Croix suggested inserting language into the proposed regulation that staff would make reasonable efforts to provide training within 30 days of the last day for filing nomination papers. Commissioner Studley found the solution to be acceptable.

Public Comment:

Mr. Luby stated that there are still problematic parts to the regulations regarding: confused language in one of the provisions; a regulation that conflicts with enforcement of a section of the code; and the absence of a regulatory section implementing enforcement of a section of the code.

Executive Director St. Croix stated that, after receiving Mr. Luby's suggestions, he had discussed the suggestions with the Assistant Deputy Executive Director. Based on that conversation, Executive Director St. Croix declined to adopt Mr. Luby's suggestion in the proposed regulation because the regulations should be as simple as possible and, under the accounting methods Mr. Luby is proposing, there would be double counting issues.

Charlie Marsteller thanked Ethics staff for the interested persons meetings. He also stated that certain documents pertaining to this Commission meeting were released to the public in too short of a time for the public to study the documents and hoped release dates would come in time for the public to study further.

Commissioner Studley asked about the time constraints. Executive Director St. Croix responded that the Board of Supervisors takes time to review the regulations adopted by the Commission, and that in order to have the regulations available to the public during elections season, preceding the November elections, the Commission should approve the regulations as soon as possible.

Motion 07-04-09-4 (Studley/Ward): Moved, seconded and unanimously passed (3-0) that proposed regulations and revised regulations of the Campaign Finance Reform Ordinance by Ethics staff be adopted.

Commissioner Harriman stated that although no representative from the Taxi Commission was present, the Taxi Commission's SIA was still pending approval.

Motion 07-04-09-5 (Ward/Studley): Moved, seconded and unanimously passed (3-0) that the Commission initially adopt the SIA for the Taxi Commission.

IX. Minutes of the March 12, 2007 Regular Meeting of the Ethics Commission

Executive Director St. Croix noted one minor grammatical change to the minutes of March 12, 2007.

Public Comment:

None.

Motion 07-04-09-6 (Studley/Ward): Moved, seconded and unanimously passed (3-0) that the Commission adopt the minutes of the meeting of March 12, 2007, as amended.

X. Executive Director's Report

Executive Director St. Croix referenced two aspects of the report. First, he noted a memo attached to the report discussing the Bureau of Delinquent Revenues ["BDR"] concerning the largest cases in front of BDR and the current status of those cases. Second, Mr. St. Croix discussed a campaign finance event he recently moderated on constitutional challenges to public financing of campaigns. Mr. St. Croix also noted that several training workshops would be coming up and told the Commissioners to contact him with any questions about those events. Mr. St. Croix further stated that he expects a closed session at the May meeting.

Mr. St. Croix stated that to date Ethics staff has received over 500 Statements of Economic Interests, amending the report's calculation of over 400. He also stated that the Ethics Commissioners have all filed their statements in a timely fashion.

Public Comment:

None.

XI. Public comment on matters appearing or not appearing on the agenda that is within the jurisdiction of the Ethics Commission.

Mr. Marsteller stated that there was a press article concerning the Community College on Sunday. He stated that the Commissioners should be prepared in case the Community College needed assistance on the matter and that the matter

could be coming in front of the Commissioners soon.

XII. Items for future Meetings

Commissioner Harriman stated that this item would now be a continual part of meetings if any Commissioner wished to discuss any topic for future meetings. She asked that Commissioners refrain from discussing substantive issues during this time.

Public Comment:

None.

XIII. Adjournment

Motion 07-04-09-7 (Studley/Ward): Moved, seconded and unanimously passed (3-0) that the Commission adjourn.

The meeting was adjourned at 8:05 p.m.

Respectfully submitted,

Paul Solis

Investigator/ Legal Analyst

SF Ethics Commission

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May 14, 2007

SAN FRANCISCO ETHICS COMMISSION

NOTICE OF REGULAR MEETING

May 14, 2007 5:30 P.M.

and AGENDA

Room 408 City Hall

1 Dr. Carlton B. Goodlett Place, San Francisco

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I. Call to order and roll call.

II. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

III. Statements of Incompatible Activities. The Commission has adopted a common template for Statements of Incompatible Activities (SIAs). At this meeting, the Commission will consider draft SIAs for initial adoption. Representatives of departments under consideration may attend to make comment on SIAs and possibly answer questions from Commissioners. Departments under consideration include: Children and Families Commission, Port of San Francisco, Department of Aging and Adult Services and Commission on Aging, and Department of Human Services and Human Services Commission. The draft SIAs for these departments are available at the Commission office and on the Commission website. (Discussion and possible action.)

IV. Regulations on Gifts from Restricted Sources. The annual limitation on gifts from restricted sources has been changed from \$100 to zero under section 3.216 of the Campaign and

Governmental Conduct Code. Section 3.216 requires the Commission to issue regulations to implement the change, including regulations exempting voluntary gifts that are nominal in value such as gifts that are given by vendors to clients or customers in the normal course of business. The proposed regulations will implement the change. The proposals will also make changes to Regulation 3.216-1 to increase the exemption of gifts from subordinates from \$20 to \$25; and to Regulations 3.224-1 and 3.234-5 to clarify that a person does not act with intent to influence a governmental decision when the action the person is involved with is solely ministerial, secretarial, manual or clerical. A copy of the proposed regulations is available at the Commission office and on the Commission website. (Discussion and possible action.)

V. Ordinance amending section 3.234 of the San Francisco Campaign and Governmental Conduct Code. Supervisor Peskin has introduced legislation to prohibit individuals who have served as senior staff members to either the Mayor or a member of the Board of Supervisors from communicating with any representative of the City with the intent to influence a government decision for one year after they terminate employment with the City. Staff has prepared an amendment to this proposed legislation to provide that an equivalent position that may be subject to the restriction is one that the Commission will determine via regulation based on an analysis of the functions and duties of the position. A copy of the proposed legislation and a staff report are available at the Commission office and on the Commission website. (Discussion and possible action.)

VI. Recommendations regarding Statements of Incompatible Activities. Staff has proposed that the Commission make one change to the SIA template. In addition, staff has proposed

that the Commission approve a recommendation that all SIAs become effective 30 days after the last day that the Commission finally approves the SIAs for existing departments, boards and commissions. Under Regulation 3.218-1(f), the Commission, at a public hearing, must finally approve the SIAs, which must then be provided to the department, board, or commission within two business days of such approval. Under the proposal, the final approval date will be deemed the effective date. A copy of the staff report will be available at the Commission office and on the Commission website. (Discussion and possible action.)

VII. Probable Cause Hearing in the Matter of Ethics Complaint 20-050906 against Respondents San Franciscans for Affordable Clean Energy . . . Yes on D Committee and Carolyn Knee, Treasurer. The Ethics Commission will conduct a hearing based on the Executive Director's determination that there is reason to believe that a violation of law relating to campaign finance has occurred in the above matter. Respondents have requested that the hearing be held in public. (Discussion and possible action.)

VIII. Closed Session - Closed Session - Closed session.
(Discussion and possible action.)

Closed session held pursuant to Charter section C3.699-13, Brown Act section 54956.9(c) and Sunshine Ordinance section 67.10(d) to discuss anticipated litigation as plaintiff.

Conference with Legal Counsel: Anticipated litigation as plaintiff

Number of possible cases: 1 (In the Matter of Ethics Complaint 20-050906 against Respondents San Franciscans for Affordable Clean Energy . . . Yes on D Committee and Carolyn Knee, Treasurer.)

IX. Discussion and votes regarding closed session action and

deliberations. (Discussion and possible action.)

Discussion and vote pursuant to Brown Act section 54957.1 and Sunshine Ordinance section 67.12 on whether to disclose any action taken or discussions held in closed session regarding anticipated litigation.

Motion: The Charter provides that deliberations regarding complaints are confidential. Pursuant to section C3.699-13, the Ethics Commission finds that it is in the best interests of the public (not) to disclose its closed session deliberations re: anticipated litigation.

X. Policy Discussion/Determination. Staff has requested policy direction from the Commission on the following matters: (1) Should late filing fees be waived for candidates who were unaware that they received contributions from affiliated entities whose contributions met the threshold for filing the Form 497, Late Contribution Report, which is required when a contribution of \$1,000 or more is received during the last 16 days of an election?; (2) Should a forfeiture be assessed against a candidate who initially received, deposited and returned a contribution and then subsequently during the same election season received and deposited another contribution from the same source, if the total amount of contributions actually kept by the candidate does not exceed the contribution limit?; (3) Should enforcement staff address all pending and outstanding fine and forfeiture issues related to the remaining matters under the Commission's former streamlined enforcement program? (Discussion and possible action.)

XI. Minutes of the Commission meeting of April 9, 2007. (Discussion and possible action.)

XII. Executive Director's Report. An update of important Ethics Commission staff activities since the previous monthly meeting. (Discussion.)

XIII. Items for future meetings. Commissioners may propose

items for future agendas and the Commission may determine the priority of these items. (Discussion.)

XIV. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

XV. Adjournment.

Know Your Rights Under the Sunshine Ordinance

Government's duty is to serve the public, reaching its decision in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review. For more information on your rights under the Sunshine Ordinance or to report a violation of the ordinance, contact Frank Darby by mail to Administrator, Sunshine Ordinance Task Force, 1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco CA 94102-4689; by phone at 415 554 7724; by fax at 415 554 7854; or by email at sotf@sfgov.org.

Citizens interested in obtaining a free copy of the Sunshine Ordinance can request a copy from Mr. Darby or by printing Chapter 67 of the San Francisco Administrative Code on the Internet, <http://www.sfgov.org/sunshine/>

The ringing of and use of cell phones, pagers and similar sound-producing electronic devices are prohibited at this meeting. Please be advised that the Chair may order the removal from the meeting room of any person(s) responsible for the ringing or use of a cell phone, pager, or other similar sound-producing devices.

This location is wheelchair accessible. In order to assist the City's efforts to accommodate persons with severe allergies, environmental illnesses, multiple chemical sensitivity, or related disabilities, attendees at public meetings are reminded that other attendees may be sensitive to various chemical-based

products. Please help the City accommodate these individuals. Individuals and entities that influence or attempt to influence local legislative or administrative action may be required by the San Francisco Lobbyist Ordinance [SF Campaign & Governmental Conduct. Code § 2.100] to register and report lobbying activity. For more information about the Lobbyist Ordinance, please contact the Ethics Commission at 25 Van Ness Avenue, Suite 220, San Francisco, CA 94102; telephone (415) 252-3100; fax (415) 252-3112 and web site www.sfgov.org/ethics
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SF Ethics Commission

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May 14, 2007

(Approved June 11, 2007)

Minutes of the Regular Meeting of
The San Francisco Ethics Commission
May 14, 2007

Room 408, City Hall

I. Call to order and roll call.

Chairperson Harriman called the meeting to order at 5:35 p.m.

COMMISSION MEMBERS PRESENT: Susan Harriman,
Chairperson; Jamiene Studley, Commissioner; and Emi
Gusukuma, Vice-Chairperson.

Commissioner Charles Ward and Commissioner Eileen Hansen
were excused.

STAFF PRESENT: John St. Croix, Executive Director; Mabel Ng,
Deputy Executive Director; Paul Solis, Investigator/Legal
Analyst; Richard Mo, Chief Enforcement Officer.

OFFICE OF THE CITY ATTORNEY: Chad Jacobs, Deputy City
Attorney.

OTHERS PRESENT: Tamara Foster, Children and Families
Commission; John Martin, Airport Commission; John Murray,
Department of Aging Adult Services; Norm Nickens, Retirement
Board; Tina Olson, Port Authority; David Noyola, Office of
Supervisor Aaron Peskin; David Waggoner; Carolyn Knee; Doug
Comstock; Joe Lynn; Charlie Marsteller; Kevin Heneghan; Jim
Sutton; and other unidentified members of the public.

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- San Francisco Children and Families Commission Statement of Incompatible Activities
- San Francisco Department of Aging and Adult Services Statement of Incompatible Activities
- Port of San Francisco Statement of Incompatible Activities
- San Francisco Department of Human Services Statement of Incompatible Activities
- Proposed Schedule of SIA Hearings
- Memorandum from Executive Director to Ethics Commission re: Proposed Regulations related to Restricted Sources and other Provisions, May 7, 2007
- Memorandum from Executive Director to Ethics Commission re: Legislation by Supervisor Peskin, April 27, 2007
- Memorandum from Executive Director to Ethics Commission re: Recommendations regarding the Statements of Incompatible Activities
- Draft Minutes of the April 9, 2007 Regular Meeting of the Ethics Commission
- Executive Director's Report to the San Francisco Ethics Commission for the Meeting of May 14, 2007
- Five month goals target, Ethics Commission 2007
- Email from Nick Goldman to the Ethics Commission, May 13, 2007

- Draft regulations on gifts from restricted sources

II. Public comment on matters appearing or not appearing on the agenda that is within the jurisdiction of the Ethics Commission

Joe Lynn stated that the Community College Board has hired an investigator to address an issue of diverted funds to a campaign committee. Mr. Lynn further stated that there is still a question of whether more funds were diverted and whether the College will retrieve those funds.

III. Statements of Incompatible Activities

Children and Families Commission

Tamara Foster, on behalf of the Children and Families Commission ("CFC") stated that CFC initially drafted a Statement of Incompatible Activities ("SIA") in 2004. Ms. Foster stated that Ethics staff contacted CFC in 2006 and together with CFC's Executive Director and Deputy Director, CFC drafted a new SIA that was approved by its commission. She stated that the approved SIA was now in front of the Ethics Commission for its approval.

Port of San Francisco

Tina Olson, on behalf of the Port of San Francisco ("Port"), stated that the Port's SIA is a standard template with a few exceptions that pertain specifically to the Port. She stated that the Port Commission approved the SIA two years ago and since that time, Port staff has been working with Ethics staff to clarify the SIA. Ms. Olson also stated that the current SIA contains specific language for Port employees because the Port differs from other City Departments in that it leases property. She stated that the goal of the SIA language was to prohibit Port staff from taking bribes.

Commissioner Gusukuma asked if the current SIA had been approved by the Port commission. Ms. Olson responded that she believed it had been approved two years ago.

Commissioner Gusukuma asked if language concerning "in the absence of a fully executed lease" was meant to prohibit Port employees from accepting gifts in that limited scenario or in a broader context. Ms. Olson responded that the language reflects situations that have actually come before the Port concerning tenants who come on Port property before the start of their lease. Commissioner Gusukuma stated that the language might be more clear if the clause in question was deleted. Ms. Olson agreed and stated she would make the change.

Department of Aging and Adult Services and Department of Human Services

John Murray appeared on behalf of the Department of Human Services ("DHS") and the Department of Aging and Adult Services ("DAAS"). He stated that because the SIA process is the same for both departments, he would discuss them together. Mr. Murray stated that DHS was asked by Ethics staff to review its existing SIA and modify it to reflect current situations that may come before the department. He stated that the current SIA has been approved by the executive management team and commissions of both DHS and DAAS. Commissioner Gusukuma inquired about other codes of professional conduct considered in drafting the SIA. Mr. Murray responded that there are several categories of professionals within DHS and the language in the SIA was meant to be broad to cover several codes of conduct. Commissioner Gusukuma then asked if information technology employees would be barred from outside employment regardless of whether they received compensation for their outside activity, noting that other portions of the SIA discussed this issue of compensation. Mr. Murray responded that the omission of language regarding compensation for outside employment for information technology employees was not intended. Commissioner Gusukuma stated that she believed language concerning the issue of compensation for outside activity should be present. Mr. Murray agreed. Commissioner Gusukuma then inquired about the meaning of the clause "a significant use of data" in the SIA. Mr. Murray responded that the clause encapsulates all software development packages.

Public Comment:

None.

Motion 07-05-14-1 (Gusukuma/Studley): Moved, seconded and unanimously passed (3-0) that the Commission initially adopt

the SIAs for the Children and Families Commission, Port of San Francisco, Department of Aging and Adult Services, and the Department of Human Services, as amended.

IV. Regulations on Gifts from Restricted Sources

Deputy Director Mabel Ng stated that at the Commission's last meeting, Commissioners considered regulations implementing an amendment to San Francisco Campaign and Government Conduct Code section 3.216. She stated that questions were raised regarding certain provisions of the proposed regulations and that since the last meeting, staff has taken steps to address the Commission's inquiries. She stated that representatives of the Employees' Retirement System, Port of San Francisco and the Airport Commission were present to discuss aspects of the regulations that pertain to them.

Employees' Retirement System

Norm Nickens, on behalf of the Employees' Retirement System ("ERS"), stated that ERS supports regulations drafted by Ethics Commission staff that would allow ERS staff to exercise a limited exception to accept meals at specific events. He stated that ERS employees, in the course of their work, have continual contact with the business and investment community and that at times, meals are provided to ERS employees. He stated that all employees are required to file statements of economic interests. Mr. Nickens then addressed a concern made by Commissioners at the last meeting, that if personally funded, ERS employees could seek reimbursement from the City for meals. He stated that the City Controller informed him that City funds would not be available for meal reimbursement. Commissioner Studley asked whether or not ERS staff is compensated for service on investment company advisory boards. Mr. Nickens responded that they are not. Commissioner Gusukuma asked whether ERS employees are subject to the state gift law limit. Mr. Nickens responded that

they are subject to the limit.

Airport Commission

John Martin, on behalf of the Airport Commission ("Airport"), stated that the Airport is also in support of regulations submitted by Ethics Commission staff. Mr. Martin discussed examples of scenarios where Airport employees have attended events where complimentary meals have been provided by the host. He explained that without the limited exception in the drafted regulations, Airport employees would have to decline acceptance of the meal, thereby singling themselves out within a large group of attendees at the event. Mr. Martin stated that he felt this would be detrimental to building business relationships that are in the best interest of the City.

Port of San Francisco

Tina Olson, on behalf of the Port, stated that the Port's situation is similar to the Airport in that it is attempting to build business relationships but in a maritime context. Ms. Olson discussed examples of situations where representatives from various city ports would attend events where complimentary meals were provided. She stated that in refusing to accept the meal, the Port would be singled out in a group and business relationships would be affected.

Commissioner Gusukuma inquired as to why certain City departments are granted an exception to gift restrictions while others are not. Executive Director John St. Croix responded that the departments with exceptions are unique in that they manage extraordinary amounts of assets or debt and that they deal in unique business industries with unique business cultures. Commissioner Gusukuma asked whether there are other City departments that may deserve exceptions to gift restrictions. Deputy Director Ng responded that the financial division of the Mayor's Office may be an appropriate department, as well as the Public Utilities Commission.

Chairperson Harriman inquired about exceptions in the drafted regulations concerning events that are "professional or educational." Deputy Director Ng responded that Ethics staff took this language from federal guidelines and that deleting the language would create an expansion to the exceptions. Chairperson Harriman discussed an example of a situation where an event attended by City employees was neither professional nor educational, but within the scope of official duties. She stated that because of situations like this, the regulation may be restrictive enough without the language "professional or educational." Deputy Director Ng acknowledged that she would make the requested deletion to the regulation. Commissioner Gusukuma inquired as to why two subsections, (e) and (f), of regulation 3.216(b)-5 discuss limitations upon accepting meals from persons negotiating a contract with the City, while subsection (d) does not. Mr. Nickens responded that ERS has a separate policy addressing the issue of contacting individuals during contract negotiations. Commissioner Gusukuma asked if adding the language to subsection (d) would contradict the policy of ERS. Mr. Nickens responded that he did not believe the addition of language would create a conflict.

Deputy City Attorney Jacobs stated that if the language is added to subsection (d), it should be broad enough to apply to many City departments and not simply to ERS. Commissioner Gusukuma stated that she believed the subsections should all contain the same language to remain consistent. Executive Director St. Croix stated that staff will incorporate the language into the subsection.

Public Comment:

None.

Motion 07-05-14-2 (Studley/Gusukuma): Moved, seconded and unanimously passed (3-0) that the Commission adopt Ethics

staff's drafted regulations on gifts from restricted sources, as amended.

V. Ordinance Amending section 3.234 of the San Francisco Campaign and Government Conduct Code

Executive Director St. Croix stated that adoption of this item requires four votes. He stated that because only three Commission members were present, consideration of the item could be postponed. Chairperson Harriman stated that the item should be postponed until the next Commission meeting, and thanked David Noyola of Supervisor Peskin's Office for his attendance.

VI. Recommendations regarding Statements of Incompatible Activities

Deputy Director Ng stated that there are two recommendations made by Ethics staff. The first concerns the SIA template by adding language to clarify that an employee who has not sought an advance written determination whether an activity is prohibited is not immune from enforcement actions if that employee engages in the prohibited activity. Ms. Ng stated that the second recommendation concerns when all SIAs will take effect; she stated that all SIAs should take effect at the same time, thirty days from the date the Ethics Commission finally adopts the last SIA before it.

Commissioner Studley inquired as to whether or not some SIAs, requiring more staff time, would affect the effective date of other SIAs. Ms. Ng responded that mostly, there has been cooperation with all City departments and that staff expects continuing cooperation. She stated that if a problem occurs for specific SIAs, staff will allow the Commission to consider them separately. Executive Director St. Croix added that if there were issues concerning some SIAs, the Commission could separate out those but make the remaining, final approved SIAs, effective per staff's recommendation.

Commissioner Gusukuma inquired about whether the Commission was voting on language adoption. Deputy Director Ng responded that the Commission's consideration of the effective date would be a policy determination as opposed to an official adoption of language. Commissioner Gusukuma then asked whether language in Ethics regulations regarding effective dates for SIAs, conflicted with the proposed policy recommendation by staff. Deputy City Attorney Jacobs stated that the staff recommendation would be in addition to the effective date discussed in the regulation.

Public Comment:

None.

Motion 07-05-14-3 (Gusukuma/Studley): Moved, seconded and unanimously passed (3-0) that the Commission adopt Ethics staff's recommendations regarding SIAs.

VII. Probable Cause Hearing in the Matter of Ethics Complaint 20-050906 against Respondents San Franciscans for Affordable Clean Energy . . . Yes on D Committee and Carolyn Knee, Treasurer

Deputy City Attorney Jacobs stated the purpose of the Probable Cause Hearing and procedures that would follow. Chairperson Harriman stated that prior to the hearing, she received a request from San Franciscans for Affordable Clean Energy Committee and Treasurer Carolyn Knee ("Respondent"), to continue the hearing until the next Commission meeting. She stated that Respondent based the request on the fact that certain documents have not yet been received from Ethics Commission staff. Chairperson Harriman stated that the Commission is looking for a tie between the documents that have not yet been given to the Respondent and the determination of probable cause.

David Waggoner, attorney for Respondent, stated that he wished to renew his request for continuance. He stated that

April 30, 2007 he filed an immediate disclosure request with the Commission and that staff responded that it would need additional time to fulfill the request due to the high volume of records requested. Mr. Waggoner stated that he believed information contained within the documents, not yet received, may prove to be dispositive of moving forward with the probable cause hearing. Mr. Waggoner stated that he would rather continue with a determination of probable cause when a full Commission is present to consider the matter. He also stated that Ethics staff relayed to him that they were unopposed to the granting of continuance.

Chairperson Harriman asked Mr. Waggoner to identify specific documents in his document request list that would bear on the issue of determining probable cause. Mr. Waggoner responded that it would be difficult to identify those documents without the opportunity to review all documents requested. He stated that he believed some of the documents to be applicable to due process concerns raised in his response to the probable cause report.

Commissioner Gusukuma inquired whether or not Respondent's due process concern involved removing the matter from the jurisdiction of the Ethics Commission. Mr. Waggoner responded in the affirmative. Commissioner Gusukuma inquired as to whether the Respondent could cite to appropriate legal authority to bolster the request. Mr. Waggoner responded that the preamble of the regulations of the San Francisco Ethics Commission provides proper authority by requiring the Ethics Commission, in its investigations, to remain above any instance of perceived impropriety or failure to provide due process rights.

Commissioner Studley and Commissioner Gusukuma asked whether or not a motion by the Commission would be necessary to deny the request for the continuance or to proceed with the

Probable Cause Hearing. Chairperson Harriman responded that a motion would accomplish either. Chairperson Harriman stated that although she preferred a full Commission, only three votes were required to grant or deny the continuance request. She also stated that she did not find the request for continuance to be compelling.

Commissioner Gusukuma inquired about whether the Commission could receive legal counsel on the matter. Deputy City Attorney Jacobs responded that the Commission could go into closed session to receive legal counsel. He also stated that there would be no due process issue with denying the continuance request and conducting the hearing without a full Commission. Mr. Jacobs stated that the Commission could move forward with the hearing, take the matter under submission, wait until absent Commissioners reviewed the transcripts, and then vote on the issue of probable cause at the next meeting.

Commissioner Studley made a motion to deny the continuance and proceed with the Probable Cause Hearing, which Commissioner Gusukuma seconded.

Public Comment:

Joe Lynn stated that he believed that the Ethics Commission Deputy Director should be recused from the investigation of the Respondent's complaint. He stated that other enforcement matters handled by Ethics staff were pursued in a less aggressive fashion and that the Respondent was being unfairly prejudiced. He stated that the remaining documents not yet reviewed by the Respondents aid in establishing a due process violation.

Doug Comstock stated that Ethics staff did not release documents in a timely fashion. He stated that he was surprised that the Ethics Commission has not released documents on a rolling basis as required by the Sunshine Ordinance. He stated

that the Sunshine Ordinance requires expedient disclosure of requested documents.

David Waggoner stated that he again requested continuance in light of the previous discussions. Chairperson Harriman stated that although she disagrees with certain aspects of the continuance request, she prefers to have a full Commission present to consider these matters.

Commissioner Studley stated that because all documents have not yet been reviewed, a disjointed proceeding may ensue. She then withdrew her previous motion. Commissioner Gusukuma stated that at the probable cause hearing, she is looking for actual legal authority to supplement any due process argument made by Respondents.

Motion 07-05-14-4 (Studley/Gusukuma): Moved, seconded and unanimously passed (3-0) that the Commission grant the Respondent's request for continuance of the probable cause hearing until the June meeting.

VIII. Closed Session

Due to continuance of the Probable Cause Hearing, there was no closed session.

IX. Discussion and votes regarding closed session action and deliberations

Due to continuance of the Probable Cause Hearing, there was no discussion and no votes regarding a closed session.

X. Policy Discussion/Determination

Executive Director St. Croix stated that staff has requested policy direction from the Commission on the three matters: (1) Should late filing fees be waived for candidates who were unaware that they received contributions from affiliated entities whose contributions met the threshold for filing the Form 497, Late Contribution Report, which is required when a contribution of \$1,000 or more is received during the last 16 days of an election?

Commissioner Gusukuma inquired whether this policy would apply prospectively. Mr. St. Croix responded that it would not. He stated further that this waiver only applies to the last three election cycles and by way of a teaching exercise, staff would explain violations to the entities so that future violations could be avoided. Mr. St. Croix stated that the Commission does not need to vote on these matters, he was simply apprising the members of his proposed actions.

(2) Should a forfeiture be assessed against a candidate who initially received, deposited and returned a contribution and then subsequently during the same election season received and deposited another contribution from the same source, if the total amount of contributions actually kept by the candidate does not exceed the contribution limit?

Mr. St. Croix stated that technically under the law, a candidate or committee would be subject to contribution limits even though the entity only had enjoyment of the contribution once. Commissioner Gusukuma asked how often this occurs. Mr. St. Croix responded that he has seen this happen several times in the past few election cycles. Commissioner Gusukuma asked if Mr. St. Croix would send her a copy of the state law pertaining to this issue, to which he responded in the affirmative.

(3) Should enforcement staff address all pending and outstanding fine and forfeiture issues related to the Commission's former streamlined enforcement program in conjunction with all pending and outstanding fine and forfeiture issues under the jurisdiction of campaign finance staff related to the Commission's former streamlined enforcement program?

Mr. St. Croix gave the Commissioners a background on the former streamlined enforcement program. He stated that this program required staff to send specific and non-specific written notice to candidates and committees regarding late filing. He stated that after specific written notice had been given to the

candidate or committee regarding a specific late reporting period, the matter would be handed over to enforcement staff if the candidate or committee had not complied with filing requirements. Mr. St. Croix stated that although that specific reporting period would be within enforcement staff's control, campaign finance staff would be in control of other late filing periods connected to the same candidate or committee that had not yet been referred to enforcement. He stated that in order to deal efficiently with late filing periods within enforcement and within campaign finance, he is proposing that enforcement staff handle all issues related to all late filing periods under the former streamlined program.

Commissioner Gusukuma asked whether there would be procedural issues in accepting the Executive Director's policy recommendation. Mr. St. Croix responded that there would be no procedural issue with the Commission's adoption of the policy.

Commissioner Studley inquired whether the questions posed in this agenda item could be re-worded to include "in conjunction with" fines and forfeitures under campaign finance staff's control. She also asked that the minutes be detailed enough to accurately reflect the discussion on the matter. Mr. St. Croix responded that they could. He also stated that the purpose of bringing these policy decisions to the Commission was to inform the Commission of pending matters.

Public Comment:

Kevin Heneghan stated that in regards to policy recommendation (2), the question should be whether the candidate has exceeded contribution limits. He stated that he has contacted several jurisdictions about this matter and ethics bodies in other jurisdictions have relayed to him that the issues hinges on exceeding contribution limits, not simply whether a forfeiture should be assessed in any case where a candidate

initially received a contribution but subsequently returned it. Mr. Heneghan stated that policy and first amendment concerns should be emphasized in these matters.

Jim Sutton stated that in regards to policy recommendation (3) he supported Mr. St. Croix's recommendation to move former streamlined enforcement matters under campaign finance staff's control to enforcement. He also stated that he believes all forfeiture matters should be moved to enforcement staff's control. Mr. Sutton stated that there are due process and privacy issues in assessing forfeitures that should be addressed by enforcement staff alone.

Charles Marsteller stated that he felt the Commission could learn from its sister organizations in other jurisdictions regarding forfeitures.

XI. Minutes of the Commission meeting of April 9, 2007

Commissioner Studley stated that she wanted more clarification on agenda item VIII regarding staff's "reasonable efforts to provide training" in the context of campaign finance training workshops. Staff noted that the change would be made.

Public Comment:

None.

Motion 07-05-14-5 (Studley/Harriman): Moved, seconded and unanimously passed (3-0) that the Commission adopt the minutes of the meeting of April 9, 2007, as amended.

XII. Executive Director's Report

Executive Director St. Croix stated that a highlight of the Executive Director's Report concerns the status of campaign finance educational and outreach programs. He stated that staff has just completed its first candidates' training for the year. Mr. St. Croix noted the high level of attendance at the first training session from potential candidates. He also stated that the Ethics Commission is about 89% through its fiscal year and has reached about 86% of its projected revenue.

Commissioner Gusukuma inquired about an interpretation on the issue of global forfeitures in the Executive Director's Report to which Mr. St. Croix clarified. Commissioner Gusukuma and Commissioner Studley asked Mr. St. Croix for copies of educational and training pamphlets produced by staff.

Public Comment:

Mr. Marsteller stated that the Ethics Commission has made progress in its development of an online filing program. He stated that there may be alternative computer programs to implement online filing specifically in regard to affiliated entities.

Mr. Heneghan stated that the Commission may want to reconsider its policy towards forfeitures in that major staff resources are spent policing insignificant reporting violations. He stated that San Francisco is the only jurisdiction requiring strict adherence to certain reporting requirements.

XIII. Items for future meetings

Commissioner Gusukuma inquired as to whether or not the Commission would be receiving additional briefing from the parties to the continued probable cause hearing. Deputy City Attorney Jacobs stated that no formal request for additional briefing was made; however, he stated that he could inform both parties that the Commission would like additional briefing for the next meeting.

Chairperson Harriman asked whether the Commission has a right to ask for additional briefing for any matter that comes before it. Mr. Jacobs responded that although it is not explicit in the regulations, it has generally been the practice at probable cause hearings to allow the Commission to request additional briefing with a timetable in place.

Chairperson Harriman then re-opened agenda item VII., directing Mr. Jacobs to send an email to both parties stating that if they choose, the parties may submit additional briefings.

If the parties choose to submit additional briefings, they can do so based on the schedule outlined in the Commission regulations and subject to page limits already in place.

Returning to agenda item XIII, Commissioner Gusukuma stated that she wanted the issue of confidentiality in enforcement proceedings, as they pertain to forfeitures, to be addressed at the next Commission meeting. Chairperson Harriman echoed Commissioner Gusukuma's sentiment.

Public Comment:

Mr. Marsteller stated that he wished to thank the Commission for conducting a hearing and felt that it marked progress. He also stated that he felt the Commission could learn from its sister organizations in other jurisdictions regarding legal conflicts.

XIV. Public comment on matters appearing or not appearing on the agenda that is within the jurisdiction of the Ethics Commission.

None.

XV. Adjournment

Motion 07-05-14-6 (Gusukuma/Studley): Moved, seconded and unanimously passed (3-0) that the Commission adjourn.

The meeting was adjourned at 7:20 p.m.

Respectfully submitted,

Paul Solis

Investigator/ Legal Analyst

Ethics Commission



25 Van Ness Ave., Suite 220
San Francisco, CA 94102
Phone 252-3100 Fax 252-3112

**SAN FRANCISCO ETHICS COMMISSION
NOTICE OF REGULAR MEETING**

June 11, 2007 5:30 P.M.

and AGENDA

Room 408 City Hall

1 Dr. Carlton B. Goodlett Place, San Francisco

3:00 p.m. rust
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- I. Call to order and roll call.
- II. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.
- III. Statements of Incompatible Activities. The Commission has adopted a common template for Statements of Incompatible Activities (SIAs). At this meeting, the Commission will consider draft SIAs for initial adoption. Representatives of departments under consideration may attend to make comment on SIAs and possibly answer questions from Commissioners. Departments under consideration include: the General Services Agency, Department of Public Works, Department of Telecommunications and Information Services, Municipal Transportation Agency, and Department of Public Health. In addition, the Commission will also consider SIAs for FINAL adoption. These include: The Department of Elections and Elections Commission, the Arts Commission, and the Department of Child Support Services. SIAs that are given final adoption will not be in force until thirty days after all SIAs have been finally adopted. The draft SIAs for these departments are available at the Commission office and on the Commission website. (Discussion and possible action.)
- IV. Ordinance amending section 3.234 of the San Francisco Campaign and Governmental Conduct Code. Supervisor Peskin has introduced legislation to prohibit individuals who have served as senior staff members to either the Mayor or a member of the Board of Supervisors from communicating with any representative of the City with the intent to influence a government decision for one year after they terminate employment with the City. Staff has prepared an amendment to this proposed legislation to provide that an equivalent position that may be subject to the restriction is one that the Commission will determine via regulation based on an analysis of the functions and duties of the position. A copy of the proposed legislation and a staff report are available at the Commission office and on the Commission website. (Discussion and possible action.)

- V. Staff Presentation of Public Finance Program Report. After each election cycle, staff makes a report on the execution of the public financing program for that election cycle. At this meeting, staff will present a report on the 2006 election cycle. (Discussion.)
- VI. Probable Cause Hearing in the Matter of Ethics Complaint 20-050906 against Respondents San Franciscans for Affordable Clean Energy . . . Yes on D Committee and Carolyn Knee, Treasurer. The Ethics Commission will conduct a hearing based on the Executive Director's determination that there is reason to believe that a violation of law relating to campaign finance has occurred in the above matter. Respondents have requested that the hearing be held in public. (Discussion and possible action.)
- VII. Closed Session – Closed Session - Closed session. (Discussion and possible action.)
- Closed session held pursuant to Charter section C3.699-13, Brown Act section 54956.9(c) and Sunshine Ordinance section 67.10(d) to discuss anticipated litigation as plaintiff.
- Conference with Legal Counsel: Anticipated litigation as plaintiff
- Number of possible cases: 1 (In the Matter of Ethics Complaint 20-050906 against Respondents San Franciscans for Affordable Clean Energy . . . Yes on D Committee and Carolyn Knee, Treasurer.)
- VIII. Discussion and votes regarding closed session action and deliberations. (Discussion and possible action.)
- Discussion and vote pursuant to Brown Act section 54957.1 and Sunshine Ordinance section 67.12 on whether to disclose any action taken or discussions held in closed session regarding anticipated litigation.
- Motion: The Charter provides that deliberations regarding complaints are confidential. Pursuant to section C3.699-13, the Ethics Commission finds that it is in the best interests of the public (not) to disclose its closed session deliberations re: anticipated litigation.
- IX. Assembly Bill 1430 – This legislation is being moved through the state legislature and may possibly be adopted by late summer or early fall. The intent of the bill is to circumvent local jurisdictions such as San Francisco from regulating what are commonly referred to as “member communications.” The bill would prevent local jurisdictions from: restricting the sources of payments for member communications, limiting payments to political parties for member communications, or limiting the scope of such payments. The Ethics Commission does not have the authority to lobby the Legislature directly. However, it may wish to petition the Mayor and Board of Supervisors to take a position in opposition to this legislation. (Discussion and possible action.)

- X. Minutes of the Commission meeting of May 14, 2007. (Discussion and possible action.)
- XI. Executive Director's Report. An update of important Ethics Commission staff activities since the previous monthly meeting. (Discussion.)
- XII. Items for future meetings. Commissioners may propose items for future agendas and the Commission may determine the priority of these items. (Discussion.)
- XIII. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.
- XIV. Adjournment.

Know Your Rights Under the Sunshine Ordinance

Government's duty is to serve the public, reaching its decision in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review. For more information on your rights under the Sunshine Ordinance or to report a violation of the ordinance, contact Frank Darby by mail to Administrator, Sunshine Ordinance Task Force, 1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco CA 94102-4689; by phone at 415 554 7724; by fax at 415 554 7854; or by email at soff@sfgov.org. Citizens interested in obtaining a free copy of the Sunshine Ordinance can request a copy from Mr. Darby or by printing Chapter 67 of the San Francisco Administrative Code on the Internet, <http://www.sfgov.org/sunshine/>

The ringing of and use of cell phones, pagers and similar sound-producing electronic devices are prohibited at this meeting. Please be advised that the Chair may order the removal from the meeting room of any person(s) responsible for the ringing or use of a cell phone, pager, or other similar sound-producing devices.

This location is wheelchair accessible. In order to assist the City's efforts to accommodate persons with severe allergies, environmental illnesses, multiple chemical sensitivity, or related disabilities, attendees at public meetings are reminded that other attendees may be sensitive to various chemical-based products. Please help the City accommodate these individuals.

Individuals and entities that influence or attempt to influence local legislative or administrative action may be required by the San Francisco Lobbyist Ordinance [SF Campaign & Governmental Conduct, Code § 2.100] to register and report lobbying activity. For more information about the Lobbyist Ordinance, please contact the Ethics Commission at 25 Van Ness Avenue, Suite 220, San Francisco, CA 94102; telephone (415) 252-3100; fax (415) 252-3112 and web site www.sfgov.org/ethics

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June 11, 2007

(Approved July 9, 2007)

Minutes of the Regular Meeting of

The San Francisco Ethics Commission

June 11, 2007

Room 408, City Hall

I. Call to order and roll call.

Chairperson Harriman called the meeting to order at 5:31 p.m.

COMMISSION MEMBERS PRESENT: Susan Harriman,

Chairperson; Emi Gusukuma, Vice-Chairperson; Jamienne

Studley, Commissioner; Eileen Hansen, Commissioner; Charles

Ward, Commissioner.

STAFF PRESENT: John St. Croix, Executive Director; Mabel Ng,

Deputy Executive Director; Paul Solis, Investigator/Legal

Analyst; Richard Mo, Chief Enforcement Officer; Steven Massey,

Information Technology Officer; Shaista Shaikh, Assistant

Deputy Director.

OFFICE OF THE CITY ATTORNEY: Chad Jacobs, Deputy City Attorney.

OTHERS PRESENT: Joan Lubamersky, General Services Agency/ Department of Telecommunications and Information Services;

Tammy Wong, Department of Public Works; Mike Casey,

Municipal Transportation Agency; Elizabeth Jacobi, Department

of Public Health; John Arntz, Department of Elections; Melinda

Self, Department of Child Support Services; David Noyola,

Office of Supervisor Aaron Peskin; David Waggoner; Carolyn

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Knee; Richard Knee; Doug Comstock; Joe Lynn; Bruce Brugmann; Teague Briscoe; Paul Gorky and other unidentified members of the public.

MATERIALS DISTRIBUTED:

- General Services Agency Statement of Incompatible Activities
- Department of Telecommunications and Information Services Statement of Incompatible Activities
- Department of Public Works Statement of Incompatible Activities
- Municipal Transportation Agency Statement of Incompatible Activities
- Department of Public Health Statement of Incompatible Activities
- Department of Elections Statement of Incompatible Activities
- San Francisco Arts Commission Statement of Incompatible Activities
- Department of Child Support Services Statement of Incompatible Activities
- Proposed Schedule of SIA Hearings
- Memorandum from Executive Director to Ethics Commission re: Legislation by Supervisor Peskin, April 27, 2007
- Report on San Francisco's Limited Public Financing Program
- Memorandum from Executive Director to Ethics Commission re: AB 1450, June 6, 2007
- Draft Minutes of the May 14, 2007 Regular Meeting of the Ethics Commission
- Executive Director's Report to the San Francisco Ethics Commission for the Meeting of June 11, 2007
- Five month goals target, Ethics Commission 2007
- Revenues received as of June 6, 2007

II. Public comment on matters appearing or not appearing on the agenda that is within the jurisdiction of the Ethics Commission

None.

III. Statements of Incompatible Activities

Statements for Initial Adoption

General Services Agency

Joan Lubamersky, on behalf of the General Services Agency ("GSA"), stated that GSA has patterned its Statement of Incompatible Activities ("SIA") after the City template with few additions. She stated that smaller divisions within GSA had direct input from employees while larger divisions had input from upper management after discussion with employees. Commissioner Ward inquired about whether a proposed SIA provision, in section III. B. 6 banning an employee from receiving compensation from a contract or vendor of any City department, applies only to situations where an employee participated in the award of a contract. Ms. Lubamersky responded in the affirmative. Deputy City Attorney Jacobs added that the prohibition more broadly applies to the Office of Contract Administration ("OCA") whereas in other City departments, the prohibition only applies to employment or compensation with vendors of the employee's specific department. Because OCA must approve all City contracts, the ban here applies when the OCA employee participates in the award of the contract, regardless of which City department is involved.

Commissioner Hansen asked whether the Animal Control and Welfare Commission would be covered in GSA's SIA. Ms. Lubamersky stated that because the Commission is an advisory body to the Board of Supervisors, GSA does not cover the SIA for Animal Control and Welfare. Deputy City Attorney Jacobs stated that currently, advisory bodies are not subject to SIA requirements.

Commissioner Hansen inquired about language that identified GSA as the agency that other departments, contained within it,

would go to with SIA questions. Deputy Director Ng stated that the purpose of the language was to give that power to the agency with overarching authority. Commissioner Hansen then inquired about an exception for activities related to contracts administered by OCA. Ms. Lubamersky responded that because OCA administers so many contracts within GSA, the definition of "administering," and the resulting scope of prohibited activities, would be too broad. Chairperson Harriman suggested changing "administering" to "administered," to which Ms. Lubamersky agreed.

Commissioner Studley suggested inserting "may or shall" into a section of the SIA where the phrase was mistakenly absent. Ms. Lubamersky agreed and stated that the word "may" will be added.

Department of Public Works

Tammy Wong, on behalf of the Department of Public Works ("DPW"), stated that DPW followed the SIA template language. She also stated that the management of DPW has seen, reviewed, and approved the SIA.

Department of Telecommunications and Information Services
Joan Lubamersky, on behalf of the Department of Telecommunications and Information Services ("DTIS"), stated that DTIS followed the template language and added few changes specifically related to the department.

Municipal Transportation Agency

Mike Casey, on behalf of the Municipal Transportation Agency ("MTA"), stated that in 2004 MTA management created an initial SIA statement. Since that time, MTA has met with Ethics staff to create a new SIA.

Commissioner Hansen inquired as to why certain language, regarding prohibition on outside employment with an entity currently in a contract with the City, was in the MTA's SIA but not in the SIA template. In addition, she asked why similar

language was present in DPW's SIA. Mr. Casey responded that the language exists because of the size of MTA and because of the desire to retain current employees. In response to Commissioner Hansen's second question relating to DPW, Deputy Director Ng stated that not all City departments enter into contracts, so that language may not be applicable in every scenario. Commissioner Hansen stated that the language in question, relating to MTA and DPW, should be the same for both departments.

Commissioner Gusukuma suggested inserting the phrase "or receive compensation from" into the SIA to cover the situation of independent contracting. Mr. Casey stated that MTA would make that change.

Department of Public Health

Elizabeth Jacobi, on behalf of the Department of Public Health ("DPH"), stated that DPH already has an existing code of conduct. After meeting with Ethics staff, department directors reviewed the existing code and adopted the current DPH SIA. Commissioner Ward inquired about an exception for "provider networks." Ms. Jacobi responded that the exception applies in situations where a doctor or dentist works part-time for the City but also works for a healthcare network that receives contract or grant funds from the City. Commissioner Hansen suggested inserting the word "healthcare" before "provider networks" for clarification. Ms. Jacobi responded that she would make that change.

Commissioner Hansen inquired as to why DPH did not include much department-specific language in their SIA and asked if the current DPH SIA had been approved by the Health Commission. Ms. Jacobi stated that because DPH has an existing detailed code of conduct, the department used the SIA to supplement that code. She also stated that the Health Commission has not yet approved the SIA.

Public Comment:

None.

Motion 07-06-11-1 (Hansen/Ward): Moved, seconded and unanimously passed (5-0) that the Commission initially adopt the SIAs for the General Services Agency, Department of Telecommunications and Information Services, Municipal Transportation Agency, and Department of Public Health, as amended.

Statements for Final Adoption

Department of Elections

John Arntz, on behalf of the Department of Elections ("Elections"), stated that since his last appearance for SIA review, Elections has made some small changes to the SIA. Commissioner Ward asked if City employees who work part-time for an employer, who was the proponent of a ballot initiative, would be engaging in an incompatible activity. Mr. Arntz responded that he believed that would not rise to level of an incompatible activity. Executive Director St. Croix stated that the statement is meant to regulate "proponents" as those individuals who actively engage in the ballot initiative process. Commissioner Ward responded that as written, the statement does not define "proponent" in that manner. Deputy City Attorney Jacobs stated that under state law, there is a definition of "proponent." Chairperson Harriman suggested adding language in the SIA that refers to the definition written into state elections law. Mr. Arntz agreed with the suggestion. Commissioner Hansen suggested combining the language of Elections' SIA section III.A.1.b and section III.A.1.c for a more simplistic and consistent reading. Chairperson Harriman disagreed stating that each section applied to separate situations for proponents and circulators. Commissioner Studley stated that section III.A.1.b, pertaining to "proponents," was clear because the definition is specified in

state law, but that section III.A.1.c, pertaining to "circulators," may be too broad.

Commissioner Hansen maintained that she took issue with the language difference of section III.A.1.b and section III.A.1.c. Mr. Jacobs suggested taking language from section III.A.1.c and adding it to section III.A.1.b so that both sections would regulate "submissions" to Elections rather than "appearing on a ballot." Commissioner Hansen agreed with this suggestion. Chairperson Harriman stated that because there were several proposed changes to the SIAs for final adoption, the SIAs should be considered again at the next Commission meeting. Executive Director St. Croix agreed.

Commissioner Hansen suggested inserting the word "lobbyist" into Elections SIA section III.A.1.f.

San Francisco Arts Commission

Commissioner Studley stated that because she currently sits on the board of an arts commission, she wished to inquire as to whether or not her consideration of the SIA was improper. Mr. Jacobs responded that there is no legal issue with her consideration of the SIA, but if she felt that there was an appearance of impropriety, she could ask the Commission to vote on her recusal. Commissioner Studley did not recuse herself from consideration of the SIA.

Commissioner Ward, in considering the Arts Commission SIA, inquired as to why a City official who gains specific knowledge through his work in a City department, isn't assumed to be acting on behalf of the department when creating and signing a ballot argument with his official title. Mr. Jacobs stated that typically ballot arguments contain a statement that the official's title is for identification purposes only.

Commissioner Gusukuma and Commissioner Ward suggested inserting language in the SIA that mirrors the "for identification purposes only" language in the ballot argument. Mr. Jacobs

agreed with the suggestion.

Commissioner Gusukuma asked whether there would be an issue with amending a SIA if no representative from the Arts Commission was present. Chairperson Harriman suggested taking the SIA back to the Arts Commission for their approval of the change.

Department of Child Support Services

Melinda Self, appeared on behalf of the Department of Child Support Services ("DCSS").

Commissioner Ward inquired whether or not, under the current SIA, employees of DCSS are prohibited from using a City vehicle to pick up their children from school after City work hours. Ms. Self stated that she believed an employee could receive advanced written determination from the department of the proposed activity. Deputy Director Ng stated that advanced written determination would not apply in that scenario but that the activity may be considered a de minimis use and permissible.

Commissioner Ward also stated the same issue discussed in considering the Arts Commission SIA, involving inserting "for identification purposes only" language in a ballot argument, was present in the DCSS SIA. Ms. Self stated she had no objection to the change.

Chairperson Harriman stated that the provision restricting personal use of City vehicles to be unduly harsh. Executive Director St. Croix stated that there is an existing City policy on use of City vehicles and that the policy should be examined before finally adopting the SIA. Chairperson Harriman agreed. Commissioner Gusukuma asked why a provision regarding notaries was deleted from the SIA. Ms. Self responded that the initial concern was liability of the City but after further research, DCSS discovered that notaries have their own liabilities under state law. Because of this fact, DCSS concluded that the

provision was unnecessary.

Commissioner Studley inquired, pursuant to a SIA restriction, as to whether or not it is possible for a lawyer to sit on a board without giving some degree of legal advice. Deputy City Attorney Jacobs stated individuals often have overlapping functions as lawyers and members of boards and that legal advice can be given in both capacities. He stated that simply changing the SIA to make distinctions in when legal advice is provided may present problems.

Chairperson Harriman noted that due to the significant amount of concerns in considering the SIAs for final adoption, the Commission would withhold from final approval until appropriate changes were made.

Public Comment:

None.

IV. Ordinance amending section 3.234 of the San Francisco Campaign and Governmental Conduct Code

Executive Director St. Croix stated that currently, all City employees are subject to a one year post-employment restriction on attempting to influence decisions of their former departments. Mr. St. Croix stated further that the Mayor and Board of Supervisors have broader restrictions in that they are subject to a one year restriction on attempting to influence decisions of any City department. He explained that proposed legislation by Supervisor Peskin would extend that City-wide restriction to all senior Mayoral staff and legislative aides to Supervisors.

David Noyola, on behalf of the Office of Supervisor Aaron Peskin, stated that because staff members develop important relationships and have great access to decision makers, the attempt of the legislation is to control access to local government.

Commissioner Hansen inquired as to why the legislation is

limited to the Mayor's Office and the Board of Supervisors. She asked about the definition of "senior staff" in the proposed legislation, inquiring as to why the definition does not mirror the list of decision makers who must submit a form 700, statement of economic interests.

Mr. Noyola responded that the distinction between the Mayor's Office, the Board of Supervisors, and all other City departments, is that the relationships developed with elected officials are very different. He also stated that broadening the list of staff subject to the restriction would be far beyond what was intended in developing the legislation.

Commissioner Ward asked why the restriction only applies for one year. Mr. Noyola responded that in developing the legislation, staff assumed that the one year restriction already in place for all City employees was sufficient. Mr. St. Croix stated that the one year post-employment rule predates his time at the Ethics Commission but that he believed the proposed legislation was meant to mirror the existing policy. Deputy Director Ng stated that the San Francisco voters passed Proposition E in 2003, changing the two year restriction to one year.

Commissioner Gusukuma stated that she was concerned with the retroactivity of the proposed legislation. Mr. Noyola responded that the idea behind applying the law to all former senior staff, as well as present and future, was that if the law was good public policy for some individuals in certain positions in government, it was good for all of those individuals.

Chairperson Harriman and Commissioner Studley stated that they agreed with Commissioner Gusukuma and felt a notice issue was present in applying the new law to all previous staff members. Commissioner Studley stated that it would be difficult for all former staff members to unravel their professional relationships while future staff would get the

benefit of planning ahead in charting their relationships within the City.

Chairperson Harriman stated that she had discussed this issue with Mr. St. Croix earlier and was given language that could address the concerns with retroactivity. She stated that language could be inserted stating that all senior Mayoral and Supervisorial staff that have left employment with the City prior to the effective date of the legislation, would not be subject to the restriction. Commissioner Gusukuma stated that the adoption of the language would be the only manner in which she would approve the legislation.

Public Comment:

Doug Comstock stated that the proposed legislation interferes with the Sunshine Ordinance in that former government employees have the right to express their opinion about government policies in a public forum.

Motion 07-06-11-2 (Harriman/Gusukuma): Moved, seconded and passed (4-1, Hansen dissenting) that the Commission approve the ordinance amending section 3.234 of the San Francisco Campaign and Governmental Conduct Code, as amended.

Commissioner Hansen stated that because a change was made to the ordinance, there may be an issue with public notice on the agenda. Mr. St. Croix stated that traditionally, the agenda does not need to reflect every possible amendment that might be considered.

V. Staff Presentation of Public Finance Program Report

Executive Director St. Croix stated that staff added a footnote to the report. Chairperson Harriman and Commissioner Hansen thanked Assistant Deputy Director Shaista Shaikh for the work on the report. Ms. Shaikh stated that an independent expenditure report was not listed within the full report. She stated a change and update would be made accordingly.

Public Comment:

Joe Lynn stated that he would like to see a section of the report, or a future supplement, discussing costs in administering the program and costs to the public.

VI. Probable Cause Hearing in the Matter of Ethics Complaint 20-050906 against Respondents San Franciscans for Affordable Clean Energy . . . Yes on D Committee and Carolyn Knee, Treasurer

Richard Mo, Chief Enforcement Officer for the Ethics Commission staff, and David Waggoner, attorney for Respondent, stated their presence.

Mr. Waggoner began by raising two points of order. First, he requested that Deputy Director Ng be recused from the proceedings. Second, he inquired as to whether or not Commissioner Ward or Commissioner Hansen reviewed the audio tapes from the last Commission meeting to which both Commissioners replied that they had not. Mr. Waggoner then requested that no vote be taken in the case until the Commissioners listen to the tapes.

On the first point of order Chairperson Harriman stated that because it is the Commission's determination of probable cause, and not Ms. Ng's determination, the point of order had no relevance to the proceeding. On the second point of order, Ms. Harriman stated because the matter was continued, the Commission was beginning the hearing anew and that Mr. Waggoner may repeat any remarks he made at the last meeting to inform the absent Commissioners.

Deputy City Attorney Jacobs stated the purpose of the hearing and several procedural rules that would govern the hearing. He provided the Commission with three available options on how to proceed: first, the Commission could immediately deliberate and vote after public comment; second, the Commission could continue deliberation on the item until after closed session

involving legal counsel; or third, the Commission could continue the item until a future meeting. Mr. Jacobs stated that the Commission must make a determination of probable cause within 45 days of the conclusion of the hearing.

Ethics Commission Staff Case in Chief

Mr. Mo stated there was probable cause to believe the Respondent committed five violations of the campaign finance reform ordinance ("CFRO"). Mr. Mo stated that these violations were: (1) filed statements that contained false or misleading information; (2) failed to itemize 36 contributions of \$100 or more; (3) failed to timely report three late contributions; (4) failed to provide major donor notification to two contributors donating \$5,000 or more; (5) failed to provide complete contributor information for two contributors contributing \$100 or more.

Mr. Mo stated that the Respondent has not contested any of the violations, relying only on ignorance of law, the action or inaction of her accountant, and insignificance of certain violations. Mr. Mo stated further that Ethics Commission staff has provided ample evidence to carry the burden of providing probable cause to believe a violation of CFRO has occurred.

Respondent's Case in Chief

Mr. Waggoner stated that he disagreed that the Respondent did not contest any of the violations and that over the course of his argument, the failure to prove probable cause will be illustrated. He stated that although he agrees that standards are necessary in enforcing CFRO, standards should not change during investigations. He stated that compared to enforcement against Pacific Gas & Electric ("PG&E"), standards were changed, prejudicing the Respondent.

Mr. Waggoner stated that Ethics Commission staff fines officer, Oliver Luby, stated in several staff memos that 100% of fines should be waived for the Respondent. Mr. Waggoner then

asked the Commission if Joe Lynn could discuss aspects of campaign finance disclosure in order to gain more insight into the law.

Joe Lynn stated that, as a former Ethics Commissioner and staff member, he would like to compare the Respondent's case to the PG&E case, illustrating excessive fines levied against the Respondent.

Chairperson Harriman asked Mr. Lynn to be cognizant of his post-employment restrictions in not discussing any confidential information in public to which Mr. Lynn agreed.

Mr. Lynn stated that the Respondent and PG&E were on opposing sides of a 2003 ballot measure. He stated that the differences between those two sides: PG&E had a professional treasurer, attorney Jim Sutton and his law firm, while on the other, Carolyn Knee was not a professional or an attorney; Mr. Sutton had previous enforcement fines, while Ms. Knee did not; PG&E did not disclose \$800,000 of contributions while the Respondent did not disclose \$18,661; PG&E was treasured by an insured entity, Sutton's law firm, while the Respondent had no insurance and lived on a fixed income; PG&E ultimately prevailed on the ballot measure, while Respondent's committee did not. He stated that in combining all these factors according to past standards, the fines for the Respondent should be waived.

Mr. Lynn stated that the total fines levied against PG&E was 13% of the maximum that could have been sought, while 143% of the maximum was sought against the Respondent. He stated that if the standards applied to PG&E were applied to the respondent the resulting fine would be \$1,944 not \$26,700. If the standard applied to the Respondent was applied to PG&E, the fine would be \$1,376,000, fourteen times the actual fine. Mr. Lynn stated that although he advocates strong application of CFRO, standards for enforcement should not change. He

stated that the reason for this change was that Mabel Ng is biased against the Respondent because her husband, Richard Knee on the Sunshine Ordinance Task Force, voted against Ms. Ng in 2004.

Mr. Lynn stated that because probable cause hearings are rare, Respondents' due process rights are most at stake during settlement negotiations. He stated that by making a \$26,700 settlement offer, Ethics staff made settlement impossible for a retired woman on a fixed income.

Mr. Lynn stated that in another case, involving Andrew Lee, the Ethics Commission granted a large discount on maximum fines and that a discount for a person worth millions of dollars, should be granted to the Respondent.

Mr. Waggoner stated that regarding the alleged violations: late contributions were reported on the date of receipt, so the contributions were timely reported. Regarding the allegation of failure to provide major donor notices, Mr. Waggoner stated that it was not the practice of the Ethics Commission to regulate this in 2002, however Ms. Knee gave constructive notice to the entities anyway. Regarding the allegation of failure to itemized contributions of \$100 or more, Mr. Waggoner stated that Ms. Knee disclosed the total aggregate amounts but simply did not itemize. He stated that she relied on the professional accountant to handle the matter and that Ms. Knee's position on this has not changed. Regarding the allegation of missing contributor information, Ms. Knee has since provided that information and the public harm is minimal if any. Regarding the allegation of false or misleading statements, Mr. Waggoner stated this was simply a catch-all charge by staff.

In conclusion, Mr. Waggoner stated that staff's enforcement in this matter has been exceptionally disproportionate. He stated that Ms. Ng's involvement in the case creates an appearance of impropriety and that the Commission's finding of probable

cause would ratify staff's biased enforcement. He stated that after five years, much of the public's money has been spent pursuing this case.

Staff's Rebuttal

Mr. Mo stated that the \$26,700 settlement offer was only an opening to a good faith negotiation but that the Respondent declined to engage in any settlement until she retained an attorney, then offering \$500. Mr. Mo stated that just because probable cause hearings are rare, does not mean that enforcement in those instances is biased. He stated that staff attempted to engage in settlement negotiations.

Mr. Mo stated that, regarding bias by the Deputy Director, Respondent's argument rests entirely on one letter signed by the Deputy Director, sent to the Respondent. He stated that Respondent's committee was randomly selected to be audited. Upon reviewing audit findings, audit staff discovered material violations and then forwarded the matter to enforcement staff. Mr. Mo stated that after reviewing the findings, enforcement staff recommended enforcement. He stated that normally, the Executive Director signs all outgoing letters. However, in this case, the Executive Director was out of town. Mr. Mo stated that because of this absence, the Deputy Director signed the letter sent to the Respondent, notifying her of an enforcement action.

Mr. Mo stated that attempting to compare this matter to the PG&E matter or Andrew Lee matter is inaccurate. He stated that staff takes many factors into account when assessing settlement: dollar amount of violations, intent to conceal information, and degree of cooperation with enforcement staff. Executive Director St. Croix stated that the actual fine levied against PG&E was \$270,000 not \$100,000 as previously characterized. He stated that the fine was split; \$170,000 to the Fair Political Practices Commission ("FPPC") and \$100,000

the Ethics Commission. Mr. St. Croix stated that the maximum fine that could have been sought against PG&E was \$2.4 million, meaning that 12% of the maximum was received. He stated further that in Respondent's case, the maximum fines could have been \$230,000, meaning that the \$26,700 proposed settlement was also 12% of the maximum fine.

Respondent's Rebuttal

Mr. Waggoner stated he did not discuss the \$170,000 fine yielded to the FPPC because the Ethics Commission had no jurisdiction over that issue. He stated that regarding the settlement offer, he received contact from staff that the \$500 offer was declined, but did not receive any more information from staff regarding counter offers, despite his attempts to contact staff.

Mr. Waggoner stated that Mr. Mo's assertion, that Ms. Ng's only involvement in the case was signing one letter, was incorrect. He stated that staff's supplemental brief discusses many instances of Ms. Ng's involvement in the case. He also stated that it is irrelevant whether the Executive Director was out of town, Ms. Ng's signing of the letter still creates an appearance of bias.

Mr. Waggoner stated that there are many concrete facts that show bias: staff's disregard for mitigating evidence, staff's treatment of Ms. Knee as if she were a criminal, staff's excessive settlement offer, staff's failure to respond to Ms. Knee's fine waiver request, staff's disregard for fine waiver advice by Oliver Luby, staff's failure to acknowledge that Ms. Ng's presence creates an appearance of impropriety, staff's false statements at the previous meeting about stipulating to a continuance, and staff's violation of the Sunshine Ordinance for failing to provide documents that he requested.

Mr. Waggoner stated that the Commission should dismiss the case before the bias continues any further.

Questions from Commissioners

Commissioner Ward asked Mr. Waggoner if the Respondent had any evidence of Ms. Ng expressing an opinion about the investigation into the alleged violations. Mr. Waggoner responded that in addition to a notification of enforcement letter dated September 1, 2005 signed by Ms. Ng, the fact that the Sunshine Ordinance Task Force voted against Ms. Ng in 2004 is representative of her desire to influence the investigation. Mr. Waggoner stated further that the excessive penalties sought by staff were also representative of Ms. Ng's intent to influence the investigation.

Chairperson Harriman asked Mr. Waggoner if the random audit of Respondent's committee occurred before or after the vote by the Sunshine Ordinance against Ms. Ng. Mr. Waggoner responded that he believed the random audit began first. Joe Lynn stated that the vote against Ms. Ng occurred in February 2004 and the audit of Respondent's committee began after that vote.

Commissioner Gusukuma asked Mr. Waggoner if the Respondent had any evidence that Ms. Ng rejected fine recommendations made by Oliver Luby, fines collection officer. Mr. Waggoner responded that because Ethics staff did not send him all documents pertaining to his previous requests, he does not have that information.

Commissioner Gusukuma asked if the Respondent had any email from Ms. Ng that overtly rejected Mr. Luby's recommendation; she also inquired about whether Mr. Waggoner has spoken with Mr. Luby. Mr. Waggoner responded that the Respondent does not have documentation of an email from Ms. Ng but reiterated that staff has not provided all relevant documentation he had requested. He also stated that he has briefly spoken with Mr. Luby about his

recommendations.

Commissioner Studley stated that many of the issues raised at the hearing seemed to be more appropriate for a hearing on the merits, and not a probable cause hearing.

Mr. Waggoner responded that before a hearing on the merits occurs, he believes that the Commission should understand the underlying facts of the case that should preclude a hearing on the merits. He stated further that even if the Commission disagrees that there is no proof of bias, there is a definite appearance of bias and that in granting probable cause the Commission would be ratifying staff's actions and ratifying the appearance of bias.

Mr. Mo stated that Respondent's committee was randomly selected by the Commission, not by Ms. Ng. He stated that audit staff discovered violations and then took the case to enforcement staff. Mr. Mo also stated that he agreed with Commissioner Studley's suggestion that these issues were more appropriate for a hearing on the merits as mitigating factors. Commissioner Hansen asked Mr. Mo if staff fully complied with the Respondent's document request, especially regarding staff emails that would bear on this issue. She also asked Mr. Mo what type of guidance Ms. Ng provides enforcement staff. Mr. Mo responded that to comply with the document request it took four staff members and 120 hours of staff time. He stated that staff reviewed all relevant documents and turned them over to the Respondent. In response to Commissioner Hansen's second question, Mr. Mo stated that Ms. Ng provides enforcement staff with procedural and administrative guidance. He stated that she does not provide strategic guidance; the Executive Director fulfills that role.

Commissioner Gusukuma inquired about the result of the Sunshine Ordinance Task Force vote against Ms. Ng. Mr. St. Croix stated that the Oakland Public Ethics Commission

reviewed the case and found no violation of law. The San Francisco Ethic Commission then adopted the findings of that Commission.

Chairperson Harriman asked Mr. Mo if Respondent made a counter-offer to staff's initial settlement offer. Mr. Mo stated that the Respondent made a counter-offer but told staff if they declined that offer, the Respondent would submit a substantial document request.

Mr. Waggoner stated that he disagreed with Mr. Mo's previous assertion. Chairperson Harriman asked if the counter-offer was negotiable. Mr. Waggoner stated that the offer was negotiable and that when he made the counter-offer he did not attach a condition that upon declining, Respondent would issue a large document request. He stated that in talking with staff about the settlement, he felt the offer was open to discussion.

Commissioner Hansen asked Mr. Mo if staff's position was that although they did not comply with the document requests in a timely fashion, they did what they felt they could given certain constraints. Mr. Mo responded that staff reviewed and released all the documents that were responsive to the Respondent's requests. Mr. St. Croix stated that some documents requested were not disclosable under state law.

Commissioner Hansen asked if all documents, which were not protected by state confidentiality law, were turned over to respondent. Mr. St. Croix responded in the affirmative. Mr. Waggoner stated that he did not receive all documents that were not confidential and that if certain requested documents were confidential, he should have been given a list of those documents that could not have been released. He also stated that if aspects of a document were confidential, those portions should have been redacted and nonetheless given to the Respondent.

Mr. Mo and Mr. Waggoner then submitted their cases to the

Commission.

Deputy City Attorney Jacobs again provided the Commission with three available options on how to proceed: first, the Commission could immediately deliberate and vote after public comment; second, the Commission could continue deliberation on the item until after closed session involving legal counsel; or third, the Commission could continue the item until a future meeting and decide the matter within 45 days.

Commissioner Gusukuma stated that she wanted public comment to commence before entering into closed session or deliberating to which Chairperson Harriman agreed.

Public Comment:

Joe Lynn stated that under Sunshine law, staff could have personally met with the Respondent to focus the document request to ensure compliance and because they did not, the burden of Sunshine law was not met. He also stated that the Ethics Commission must be beyond reproach in these matters and prevent any instance of impropriety. He stated the Board of Supervisors has stated that the Ethics Commission only pursues small committees and campaigns instead of large ones. He stated that Ms. Ng's actions in this case are willful especially after Ms. Ng had been told by the Sunshine Ordinance Task Force and the Ethics Commission that she be recused from any matter involving the Task Force or its members. He stated that the Commission must stop proceeding with this case.

Richard Knee stated that he is a member of the Sunshine Ordinance Task force and that at the current meeting, there are a number of violations of the Sunshine Ordinance. He stated that many documents, including the probable cause report, that are relevant to the Commission's consideration of items have not been provided by staff. Mr. Knee stated further that under Sunshine law any document that has confidential portions, must

be redacted and given to the requesting member of the public. He stated that by failing to do so, and by failing to provide crucial documents for the current Commission meeting, staff is in violation of Sunshine law.

Doug Comstock stated that full staff reports were not submitted for public access at the current Commission meeting as required by Sunshine law. He stated further that he wished the Commission to fully understand the nature of grassroots campaigns. He stated that these campaigns have no money and lack many of the resources of larger, privately funded campaigns. He stated that Ms. Knee volunteered for a good cause and trusted her bookkeeper to do a good job, but sometimes it is impossible to review all submissions by bookkeepers. Mr. Comstock stated that by pursuing smaller grassroots campaigns, the public is not being protected.

Bruce Brugmann stated that in his forty years of covering local issues, he has never seen anything like this case. He stated that he was shocked that the Commission is not going after large campaigns and corporations like PG&E who are violation of the Raker Act. He stated that citizens formed the committee that Ms. Knee treasured in order to create a campaign in the public interest against large corporate violators. He stated that with consideration of this case, smaller grassroots campaigns are now penalized for trying to challenge highly funded private interests. Mr. Brugmann stated that the Commission must not proceed with finding probable cause.

Teague Briscoe stated that she first met Mr. & Mrs. Knee as a law student and that since that time, she has grown to revere and admire them. Ms. Briscoe stated that she was angered that the Commission is pursuing enforcement against people like Mr. & Mrs. Knee and that the Commission should focus its enforcement matters against large willful violators.

Chairperson Harriman inquired about the documents that were

claimed to have been absent from the meeting materials distributed to the public. Mr. St. Croix responded that because the investigation was ongoing, some documents were confidential and could not be disclosed to the public at the current meeting.

Joe Lynn stated that he disagreed with Mr. St. Croix and that the documents should have been provided at the current meeting pursuant to Sunshine law. He stated that if certain portions were confidential, they should have been redacted and nonetheless disclosed. He also stated that the documents are not on the Commission's website and that at least Mr. Waggoner's submitted documents should have been made public.

Richard Knee inquired as the possible length of a Commission closed session.

Motion 07-06-11-3 (Studley/Gusukuma): Moved, seconded and unanimously passed (5-0) that the Commission continue the agenda item.

Public Comment:

None.

Motion 07-06-11-4 (Studley/Gusukuma): Moved, seconded and unanimously passed (5-0) that the Commission go into closed session for legal counsel.

VII. Closed Session

The Commission went into closed session at 8:30 p.m. to receive legal counsel. Present at the closed session were Chairperson Harriman, Vice-Chairperson Gusukuma, Commissioner Studley, Commissioner Hansen, Commissioner Ward, and Deputy City Attorney Chad Jacobs.

VIII. Discussion and votes regarding closed session action and deliberations

Public Comment:

None.

Motion 07-06-11-5 (Harriman/Studley): Moved, seconded and unanimously passed (5-0) that the Commission keep the closed session discussions confidential.

At 8:55 p.m. the Commission returned to open session.

Chairperson Harriman stated that the Commission would return to item VI. She stated further that nobody is exempt from the law, including grassroots campaigns. She stated that much of what the Commission heard at the hearing does not touch upon the issue of probable cause to find violations, it does however relate to mitigating information to factor into settlement discussions. She also stated that she understands the Respondent's point of view on the matter.

Chairperson Harriman stated her personal view is that the Commission should table final determination of probable cause for 30 days so that the parties may enter into a fair and reasonable settlement to finally resolve the matter. She stated that if the parties do not reach a settlement in that time, the Commission will consider whether to issue a determination of probable cause.

Commissioner Ward stated that he echoed the Chair's comments regarding who the law speaks to, stating there is no exception for corporations or grassroots campaigns. He stated that his concerns are twofold: that Ms. Knee has had to go through the investigation for a lengthy period of time but that when a party has legal representation, a party should address the matter on the merits rather than issues of alleged bias. He stated that it is disappointing that such allegations would be made against Ms. Ng without proper substantiation and evidence. Commissioner Ward stated that if he was asked to vote on the matter, he would vote for probable cause. He also stated that he hopes the parties settle the matter and bring it to a close.

Commissioner Studley stated that she agreed with

Commissioner Ward and Chairperson Harriman. She stated that although the law applies to all, there should not be a deterrent for individuals to engage in the political process. She stated that to ensure these issues, the law must be evenly applied. She stated further that she would vote to find probable cause if asked to vote on the matter.

Commissioner Hansen stated that she concurred with her fellow Commissioners on the matter, stating that she believed a violation did occur. She stated that she was not persuaded that the violation was intentional and that the investigation took much too long to complete. She stated that she took statements regarding pursuit of grassroots campaigns seriously but that comparing this matter to the PG&E or Andrew Lee cases is misplaced. She stated that in the Andrew Lee case, she voted against the settlement because she felt it was too low. She also stated that had she been a Commissioner during consideration of the PG&E case, she would have voted against that settlement as well. Commissioner Hansen stated she agreed with Chairperson Harriman, that a fair settlement should be reached in 30 days.

Commissioner Gusukuma stated she agreed with the Commissioners' comments and that she hopes this matter will shed light on investigations and enforcement regulations concerning the timing of investigations. She also stated that in regard to statements made at the last meeting that the Commission had formally directed Ms. Ng to recuse herself from all matters concerning the Sunshine Task Force, Ms. Gusukuma stated that she granted a point of order only insofar as it related to the relevancy of a memorandum by Ms. Ng. She stated that she has no recollection of ever directing or ruling that Ms. Ng recuse herself.

Commissioner Gusukuma stated that at the last meeting she had asked Mr. Waggoner to provide the Commission with legal

authority to substantiate a claim of bias. She stated she read the law submitted, and takes the claim made by the Respondent very seriously.

Public Comment:

Joe Lynn stated that the initial \$500 settlement offer made by the Respondent was in response to Mr. Lynn informing the Respondent that had he been campaign finance officer, he would have requested a \$500 fine. Mr. Lynn stated that Commissioner Gusukuma had previously sustained a point of order regarding Ms. Ng and that once a Chair sustained that order, Mr. Lynn considered the issue to be a very serious breach of ethical conduct. He stated that he hoped that the Commission would take the opportunity to review the work of investigations staff and impart needed experience to the staff. He stated further that an outside observer would look at the Commission's proceedings in the matter and see the appearance of bias.

Richard Knee stated that he thanked the Commission for considering the issues before them, and thanked Ms. Ng for her decorum. Mr. Knee stated that the Sunshine Task Force and the Ethics Commission have dual purpose in keeping City Hall honest and hoped that the two bodies can move forward with that in mind.

Paul Gorky stated that he served several years in public office for the City of Brisbane. He stated that he was concerned about the indictment and characterization of the Respondent at the probable cause hearing and felt there was no place for it in public discourse. He stated that as a former member of the Sunshine Task Force he was surprised that the case had not been resolved but agreed with the Commission that it should be settled soon.

Doug Comstock stated that he was concerned about the Commission's statements regarding grassroots campaigns. He

stated that the Ethics Commission should look to why it was created because it does not exist to pursue smaller campaigns. Carolyn Knee stated that she thanked the Commission for its fairness and that she had no intention of violating the law. She stated that her role as treasurer was in good faith and for the love of her city but that she would not do it again.

Bruce Brugmann stated that Carolyn Knee began her work as treasurer in order to do the work of City Hall in regulating PG&E. Mr. Brugmann stated that he was extremely concerned about the message the Commission was sending by extending the matter for an additional time and not dismissing the case. He felt that the Commission was prohibiting grassroots exemptions to local law and that this prohibition would circumvent the motivation for other citizens to engage in the political process.

Motion 07-06-11-6 (Harriman/Studley): Moved, seconded and unanimously passed (5-0) that the Commission continue consideration of agenda item VI until the next meeting.

IX. Assembly Bill 1430

Executive Director St. Croix stated that although issues surrounding the new state legislation have not arisen currently in San Francisco, it has in San Diego and that jurisdiction has asked the Commission to endorse its opposition to the law.

Deputy City Attorney Jacobs stated that the law was meant to exempt communication from political parties to their members from expenditure or reporting requirements. The law was then amended to require the political parties to disclose communication to their members. However, the proposed law would still preclude local jurisdictions from imposing certain restrictions on member communications except those that are consistent with state statutes. He stated that although the legal basis for application to Charter cities such as San Francisco is still unclear, the intent would be to apply the law to

Charter cities.

Public Comment:

None.

Motion 07-06-11-7 (Hansen/Ward): Moved, seconded and unanimously passed (5-0) that the Commission instruct the Executive Director to petition the Mayor and Board of Supervisors to take opposition to Assembly Bill 1430.

X. Minutes of the Commission meeting of May 14, 2007

Commissioner Studley stated that the phrase "advisory boards" within agenda item IV should be amended to read "investment company advisory boards." Staff noted that the change would be made.

Public Comment:

None.

Motion 07-06-11-8 (Studley/Ward): Moved, seconded and unanimously passed (5-0) that the Commission adopt the minutes of the meeting of May 14, 2007, as amended.

XI. Executive Director's Report

Executive Director St. Croix highlighted two issues: (1) the Mayor's budget contains two additional staff positions; an additional investigator and a clerical staff person. He stated that he would also discuss with the Board additional funding; (2) staff expects to come very close to its targeted revenue. Commissioner Hansen inquired about when the public would be informed about the new regulations to CFRO that have become effective. Mr. St. Croix stated that staff would post the regulations on the Commission website. Commissioner Hansen also inquired about the timeframe for filling an open investigator position to which Mr. St. Croix stated that the process has commenced. He also stated that he plans of filling the open auditor positions soon.

Commissioner Hansen inquired whether or not the Commission could receive a report on current matters in connection with the

Bureau of Delinquent Revenue. Mr. St. Croix responded that staff will issue a report. Commissioner Hansen also asked if Commission staff could issue notice to the public regarding training and outreach programs. Mr. St. Croix responded that staff is still in preliminary stages of training programs and will begin to make notices.

Commissioner Hansen asked for a report in delinquent filers and a listing of those filers on the Commission website. Mr. St. Croix stated that staff will issue quarterly reports on delinquent filers and will post on the Commission website.

XII. Items for future meetings

Commissioner Hansen stated that she would like an update on investigations involving Ed Jew and City College to any extent possible. Executive Director St. Croix stated that confidentiality rules prohibit staff from commenting on any investigation or whether an investigation has at all been commenced.

Commissioner Hansen stated that she would like to see a report on global canvassing in addition to a discussion on SIA monitoring and enforcement.

Public Comment:

None.

XIII. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission

None.

XIV. Adjournment

Public Comment:

None.

Motion 07-06-11-9 (Studley/Gusukuma): Moved, seconded and unanimously passed (5-0) that the Commission adjourn.

The meeting was adjourned at 9:43 p.m.

Respectfully submitted,

Paul Solis
Investigator/ Legal Analyst

Ethics Commission



25 Van Ness Ave., Suite 220
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Phone 252-3100 Fax 252-3112

**SAN FRANCISCO ETHICS COMMISSION
NOTICE OF REGULAR MEETING**

July 9, 2007 5:30 P.M.

and AGENDA

Room 408 City Hall

1 Dr. Carlton B. Goodlett Place, San Francisco

DOCUMENTS DEPT.

JUL 06 2007

SAN FRANCISCO
PUBLIC LIBRARY

- I. Call to order and roll call.
- II. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.
- III. Statements of Incompatible Activities. The Commission has adopted a common template for Statements of Incompatible Activities (SIAs). At this meeting, the Commission will consider draft SIAs for initial adoption. Representatives of departments under consideration may attend to make comment on SIAs and possibly answer questions from Commissioners. Departments under consideration include: Asian Art Museum of San Francisco, Entertainment Commission, Commission of the Environment and Department of the Environment, Film Commission, Fine Arts Museum, Public Utilities Commission (including PUC Revenue Bond Oversight Committee, Rate Fairness Board, and Residential Users Appeals Board), Residential Rent and Stabilization Board, and War Memorial and Performing Arts Center. The draft SIAs for these departments are available at the Commission office and on the Commission website. (Discussion and possible action.)
- IV. Staff Presentation of Lobbyist Program – the Commission has requested a review of the Lobbyist and Campaign Consultant programs. Staff has identified some issues that the Commission may wish to address regarding the Lobbyist Ordinance. Staff will present amendments at the August meeting based on Commissioner feedback at this meeting. (Discussion and possible action.)
- V. Probable Cause Hearing in the Matter of Ethics Complaint 20-050906 against Respondents San Franciscans for Affordable Clean Energy . . . Yes on D Committee and Carolyn Knee, Treasurer. The Ethics Commission will continue deliberations regarding whether there is probable cause to believe that a violation of law relating to campaign finance has occurred in the above matter. Respondents have requested that the hearing be held in public. (Discussion and possible action.)

VI. Closed session. (Discussion and possible action.)

Closed session held pursuant to Charter section C3.699-13, Brown Act section 54956.9 (a) and (c) and Sunshine Ordinance section 67.10(d) to discuss anticipated and actual litigation as plaintiff and defendant.

A. Conference with Legal Counsel: Anticipated litigation as plaintiff

Number of possible cases: 4

B. Conference with Legal Counsel: Litigation as defendant

Committee On Jobs Candidate Advocacy Fund et.al. v Dennis J. Herrera et. al.,
Case No. C 07-03199 JSW (U.S. District Court)

C. Conference with Legal Counsel: Anticipated litigation as defendant

Number of possible cases: 1

D. Closed session held pursuant to the Ralph Brown Act, Government Code section 54957(b) and the Sunshine Ordinance section 67.10(b): Public Employee Performance Evaluation: Executive Director, Ethics Commission.

VII. Discussion and votes regarding closed session action and deliberations. (Discussion and possible action.)

Discussion and vote pursuant to Brown Act section 54957.1 and Sunshine Ordinance section 67.12 on whether to disclose any action taken or discussions held in closed session regarding anticipated litigation, existing litigation and public employee performance evaluation.

Motion: The Ethics Commission finds that it is in the best interests of the public (not) to disclose its closed session deliberations re: anticipated litigation, existing litigation and public employee performance evaluation.

VIII. Minutes of the Commission meeting of June 11, 2007. (Discussion and possible action.)

IX. Executive Director's Report. An update of important Ethics Commission staff activities since the previous monthly meeting. (Discussion.)

X. Items for future meetings. Commissioners may propose items for future agendas and the Commission may determine the priority of these items. (Discussion.)

XI. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

XII. Adjournment.

Know Your Rights Under the Sunshine Ordinance

Government's duty is to serve the public, reaching its decision in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review. For more information on your rights under the Sunshine Ordinance or to report a violation of the ordinance, contact Frank Darby by mail to Administrator, Sunshine Ordinance Task Force, 1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco CA 94102-4689; by phone at 415 554 7724; by fax at 415 554 7854; or by email at sotf@sfgov.org. Citizens interested in obtaining a free copy of the Sunshine Ordinance can request a copy from Mr. Darby or by printing Chapter 67 of the San Francisco Administrative Code on the Internet, <http://www.sfgov.org/sunshine/>

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SF Ethics Commission

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July 9, 2007

(Approved August 13, 2007)

Minutes of the Regular Meeting of

The San Francisco Ethics Commission

July 9, 2007

Room 408, City Hall

I. Call to order and roll call.

Chairperson Harriman called the meeting to order at 5:33 p.m.

COMMISSION MEMBERS PRESENT: Susan Harriman, Chairperson; Emi Gusukuma, Vice-Chairperson; Jamienne Studley, Commissioner; Eileen Hansen, Commissioner; Charles Ward, Commissioner.

STAFF PRESENT: John St. Croix, Executive Director; Mabel Ng, Deputy Executive Director; Paul Solis, Investigator/Legal Analyst; Richard Mo, Chief Enforcement Officer.

OFFICE OF THE CITY ATTORNEY: Chad Jacobs, Jon Givner, Ann O'Leary, Deputy City Attorneys.

OTHERS PRESENT: Emily Sano, Asian Art Museum; Bob Davis, Entertainment Commission; Mark Westlund, Commission and Department on the Environment; Laurel Barsotti, Film Commission; Judy Gough, Debbie Albuquerque, Fine Arts Museum; Michelle Modena, Public Utilities Commission; Timothy Lee, Residential Rent and Stabilization Board; Greg Ridenour, War Memorial and Performing Arts Center; David Waggoner; Carolyn Knee; Richard Knee; Charles Marsteller; Mark Solomon; Milton Marks; and other unidentified members of the public.

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MATERIALS DISTRIBUTED:

- Asian Art Museum Statement of Incompatible Activities
- Entertainment Commission Statement of Incompatible Activities
- Commission and Department on the Environment Statement of Incompatible Activities
- Film Commission Statement of Incompatible Activities
- Fine Arts Museum Statement of Incompatible Activities
- Public Utilities Commission Statement of Incompatible Activities
- Residential Rent and Stabilization Board Statement of Incompatible Activities
- War Memorial and Performing Arts Center Statement of Incompatible Activities
- Proposed Schedule of SIA Hearings
- Memorandum from Executive Director to Ethics Commission re: Possible Changes to the Lobbyist Ordinance, July 2, 2007
- Memorandum from Executive Director to Ethics Commission re: New Regulations Regarding Gifts from Restricted Sources and Gifts from Subordinates, June 27, 2007
- Memorandum from Executive Director to Ethics Commission re: Ethics Jurisdiction over Ballot Measure Committees
- Draft Minutes of the June 11, 2007 Regular Meeting of the Ethics Commission
- Executive Director's Report to the San Francisco Ethics Commission for the Meeting of July 9, 2007

II. Public comment on matters appearing or not appearing on the agenda that is within the jurisdiction of the Ethics Commission

Charles Marsteller stated he was pleased that the City Attorney's Office filed a response to a legal challenge to the Campaign Finance Reform Ordinance.

An unidentified member of the public stated that he supported

Carolyn Knee.

Carolyn Knee stated that she believed the dollar amounts in her case were reported and that there was no intentional fraud involved. She stated that she explained herself in a letter to the Commission but received no response. Ms. Knee stated that she acknowledged her mistakes but that Commission staff did not aid her. She also stated that she hired a professional accountant and trusted that person. Ms. Knee stated that she became a treasurer because she loved her City but that she would discourage someone from becoming a treasurer in the future.

Mark Soloman stated that he disagreed with the disparity of staff's enforcement in the Knee matter. He stated that he felt professionally treasured campaigns were being given preferential treatment. He also stated that the Ethics Commission should be more involved in the Community College matter and become the filing officer for the college.

David Waggoner stated that the two sides in the Knee case reached a good faith and fair settlement amount and that he hoped the Commission accepted the amount. He stated that Ms. Knee had relied in good faith on a professional accountant and never acted with intent to defraud. He also stated that Ms. Knee is seen as a community leader by many, that she acknowledged her mistakes, and that she had continually complied with staff. Mr. Waggoner stated that the settlement reflected all these facts in addition to the length of investigation and audit.

III. Statements of Incompatible Activities

SIAs for Initial Adoption

Asian Art Museum

Emily Sano, on behalf of the Asian Art Museum ("AAM"), stated that she worked with Ethics staff on incorporating the Statement of Incompatible Activities ("SIA") template with

already existing AAM ethics policies.

Commissioner Hansen inquired as to whether or not AAM's SIA had already been approved by its Board. Ms. Sano stated that the Board had approved the SIA. Commissioner Hansen also inquired about language in section III.A.1.a of the SIA regarding an exemption for family members of City employees. Deputy Director Mabel Ng stated that because California is a community property state, when compensation is involved in an SIA provision, the same exemption will be applied.

Commissioner Hansen requested that staff check to ensure that the exemption is limited only to those situations in all SIAs.

Commissioner Ward inquired as to whether or not section III.A.1.a would allow City employees to receive compensation from a private party outside the instances where appraisals were involved. Commissioner Gusukuma stated that as she read the provision, there are specific instances where compensation arising from an appraisal would not be prohibited.

Commissioner Harriman agreed with Commissioner Ward that the language as written was problematic. Commission Studley suggested inserting "this shall not preclude" rather than "this shall not apply to" into the SIA section in question.

Entertainment Commission

Bob Davis, on behalf of the Entertainment Commission ("EC"), stated that the EC first sent out questionnaires to staff and Commissioners, conducted workshops, and then drafted an SIA with aid from Ethics staff.

Commissioner Hansen inquired as to whether or not EC's SIA had already been approved by its Commission. Mr. Davis responded that it had been initially approved before final changes but that the Commission has not yet voted on the final draft. He stated that he does not foresee any problems with final Commission approval.

Commission and Department on the Environment

Mark Westlund, on behalf of the Commission and Department on the Environment, stated that his department interviewed staff and worked with Ethics staff to develop an SIA. He also stated that the Commission on the Environment has initially approved the SIA.

Film Commission

Laurel Barsotti, on behalf of the Film Commission ("FC"), stated that the FC had submitted its previous SIA to Ethics staff and then reworked the SIA to incorporate appropriate changes.

Commissioner Ward inquired as to the meaning of "his or her own behalf" in section III.A.3.b of the SIA. Ms. Barsotti stated that the provision was meant to clarify the fact that, for example, a Film Commissioner could serve as a location manager for a film but could not pull a permit to film.

Commissioner Studley inquired as to whether film contracts are limited or selective in some way and whether fees for film permits are standardized in section III.A.3.b. Ms. Barsotti stated that contracts are not selective unless different film companies wish to film on the same day. She also stated that fees are standardized. Ms. Barsotti stated that the FC Executive Director factors in flexibility in scheduling, promptness of application for permit, and overall economic benefits in granting contracts and permits. Commissioner Studley stated that the goal in understanding these provisions is to make certain there is no favoritism in granting permits.

Commissioner Hansen suggested reworking the entire section in III.A.3.b. She also discussed language in section III.A.3 regarding exemptions for appearing "on behalf of oneself" inquiring whether or not the language created an inconsistency. Ms. Barsotti stated that the goal of including the language is to have industry individuals represented on the Commission.

Deputy City Attorney Jacobs suggested further defining "on behalf of oneself" by using ownership percentages to which Commissioner Hansen stated she was not satisfied and asked staff to help the FC rework the section. Chairperson Harriman and Commissioner Ward stated that defining the term by using a percentage threshold would satisfy them. Chairperson Harriman suggested that Ms. Barsotti take the SIA back to her department and make changes consistent with the Commission's suggestions and concerns.

Public Comment:

None.

Motion 07-07-09-1 (Hansen/Studley): Moved, seconded and unanimously passed (5-0) that the Commission initially adopt SIAs for the Asian Art Museum, Entertainment Commission, and Commission and Department on the Environment, as amended. Fine Arts Museum

Judy Gough and Debbie Albuquerque, on behalf of the Fine Arts Museum ("FAM"), stated that FAM staff met with Ethics staff to develop an SIA and that the Board of Trustees adopted the revised version of the SIA.

Chairperson Harriman apprised Ms. Gough and Ms. Albuquerque of a previously discussed change to section III.A.1.a inserting "this shall not preclude" rather than "this shall not apply to."

Ms. Gough and Ms. Albuquerque agreed to the change.

Public Utilities Commission

Michelle Modena, on behalf of the Public Utilities Commission ("PUC"), stated that PUC staff met with Ethics staff and the City Attorney to develop an SIA. She stated that after those discussions, PUC staff received feedback from PUC managers to further develop the SIA. Ms. Modena stated that the PUC Commission has yet to approve the SIA.

Chairperson Harriman stated that in section II, paragraph 3, the word "of" should be deleted. Ms. Modena agreed. Chairperson

Harriman also asked Ethics staff if "example of inappropriate use" and "example of appropriate use" present in the PUC SIA could be added to the SIA template. Staff acknowledged that the change could be made.

Commissioner Hansen suggested having all departments' commissions approve the SIA before the SIA comes before the Ethics Commission. Executive Director St. Croix stated that there is no law requiring that action. Chairperson Harriman stated that if there is no law requiring that action, the process for approving SIAs will continue as implemented.

Residential Rent and Stabilization Board

Timothy Lee, on behalf of the Residential Rent and Stabilization Board ("RRSB"), stated that the RRSB SIA process was similar to other departments by meeting with Ethics staff and developing the draft SIA. He stated that the Board has yet to approve the SIA but does not foresee any problem with adoption.

Commissioner Hansen inquired as to why the words "or officer" was struck from section III.A.3. Mr. Lee stated that RRSB is required to have industry representatives on the Board of commissioners. He stated that those individuals are still subject to conflict of interest regulations. Commissioner Hansen asked Mr. Lee if that policy was throughout the SIA. Mr. Lee stated that it was.

War Memorial and Performing Arts Center

Greg Ridenour, on behalf of the War Memorial and Performing Arts Center ("WMPAC"), stated that after initial feedback from WMPAC employees, WMPAC staff met with Ethics staff and the City Attorney to develop the draft SIA. He also stated that the Board of Trustees had initially approved the SIA.

Public Comment:

None.

Motion 07-07-09-2 (Hansen/Ward): Moved, seconded and

unanimously passed (5-0) that the Commission initially adopt SIAs for the Fine Arts Museum, Public Utilities Commission, Residential Rent and Stabilization Board, and War Memorial and Performing Arts Center, as amended.

IV. Staff Presentation of Lobbyist Program

Executive Director St. Croix stated that the main issue in considering the lobbyist program is that there is a concern about unregistered lobbyists. Mr. St. Croix stated further that staff's current proposal in reforming the Lobbyist Ordinance is simply to broaden the definition of "lobbyist." He stated that additional solutions for change could be to lower the dollar and contact thresholds for lobbyists to register with the Ethics Commission.

Chairperson Harriman stated that in monitoring contacts, the Lobbyist Ordinance seems particularly difficult to enforce. Mr. St. Croix agreed and stated that an alternative method of asking City officials themselves to track the amount of contacts they receive from lobbyists has proven to be difficult to implement.

Commissioner Studley inquired about regulating contacts by distinguishing those lobbyists who are lobbying outside an organization from those lobbyists within an organization who are also salaried employees performing a wide variety of functions. Chairperson Harriman stated that the Lobbyist Ordinance makes that distinction by distinguishing contract lobbyists from organizational lobbyists.

Commissioner Ward inquired as to whether staff had approached City officials about keeping their own log of lobbyist contacts. Mr. St. Croix stated that staff had approached City officials but the response was very negative. Commissioner Ward stated that he believed the best way to regulate contacts by lobbyists is to regulate those individuals who are being contacted.

Commissioner Hansen stated that she was not willing to exclude any elected officials from logging contacts. She stated that she felt there was enough support from the Board of Supervisors to enact a new lobbyist policy that would include members of the Board. She also stated that it would be of great aid to the Commission to receive guidance from other jurisdictions and groups who have studied this issue for many years.

Commissioner Hansen stated that the Commission needs to spend more time discussing this issue with lobbyists and City officials because many lobbyists feel the current regulation does not adequately regulate them.

Commissioner Studley inquired whether or not there are other issues concerning the Lobbyist Ordinance outside the discussion of contacts and defining "lobbyist" that would be pertinent to an interested persons meeting in reconsidering the Ordinance.

Chairperson Harriman stated that it would be beneficial to look at the current state of lobbyist regulation in other jurisdictions. Mr. St. Croix stated that staff would research the issue for the Commission.

Commissioner Hansen stated that the Commission has heard from lobbyists who know other lobbyists that are not registering. She also stated that the Commission has also heard from members of the public that lobbyists who are registered know the loopholes of the Ordinance.

Public Comment:

Charles Marsteller stated that Commission staff should set up an audit system to regulate lobbyists. He also stated it would be beneficial to take direction from the Board of Supervisors on the issue and that they would be amendable to regulating contacts. Mr. Marsteller stated that the Commission has the authority to make these changes because the voters have given it the power to do so.

Anita Mayo stated that she suggested focus on compliance with

the current lobbyist law. She also stated that although unions are not required to register as lobbyists, unions do in fact lobby elected officials. She also stated that she disagreed with certain aspects of the Executive Director's memo regarding union lobbying because union executives receive compensation and also make contacts as interpreted by the City Attorney. Ms. Mayo then suggested a change to a chart in the Executive Director's memo.

An unidentified member of the public provided comments.
V. Probable Cause Hearing in the Matter of Ethics Complaint
20-050906 against Respondents San Franciscans for Affordable
Clean Energy . . . Yes on D Committee and Carolyn Knee,
Treasurer

Executive Director St. Croix stated that staff recommended settlement of \$267 in the Knee matter. He stated that Carolyn Knee had acknowledged her errors and there was no good reason to prosecute the case further. Mr. St. Croix stated there were lessons learned on both sides and that staff also acknowledges that there is more work to be done regarding outreach and education for small filers.

Commissioner Hansen stated that she voted to calendar this matter because she wanted more specificity in how staff determined the \$267 settlement amount. She stated that she believed staff had given some rationale for its much larger settlement offer at the previous meeting but was lacking in rationale for the smaller amount. Commissioner Hansen asked for an explanation of how staff went from \$26,700 previously to \$267 at the current meeting.

Mr. St. Croix stated that after the last meeting, staff made an offer of \$2,670 to Ms. Knee. He stated that after taking into account the fact that Ms. Knee was on a fixed income, that enforcement had been ongoing, and that there was a strong public knowledge and awareness of the issues involved in the

case, he felt the \$267 settlement was fair. Mr. St. Croix also stated that Ms. Knee's testimony at the last meeting persuaded him to make an offer that symbolized the current disposition of the case.

Commissioner Hansen inquired as to how staff arrived specifically at the \$267 settlement amount. Mr. St. Croix responded that the amount represented 10% of his prior offer of \$2,670. Commissioner Hansen stated that it was very important that the public show interest in the work of Commission and that the proceedings in this matter highlight why Commission meetings should be televised. She stated that a difference is made when the public is involved in the Commission's work.

Chairperson Harriman stated Ms. Knee's own testimony was most persuasive in considering this matter.

Public Comment:

None.

Motion 07-07-09-3 (Hansen/Ward): Moved, seconded and unanimously passed (5-0) that the Commission accept staff's \$267 proposed settlement in the Matter of Ethics Complaint 20-050906 against Respondents San Franciscans for Affordable Clean Energy . . . Yes on D Committee and Carolyn Knee, Treasurer.

VI. Closed Session

Motion 07-07-09-4 (Gusukuma/Studley): Moved, seconded and unanimously passed (5-0) that the Commission go into closed session to receive legal counsel.

The Commission went into closed session at 6:50 p.m. Present at the closed session were Chairperson Harriman, Vice-Chairperson Gusukuma, Commissioner Studley, Commissioner Hansen, Commissioner Ward, Deputy City Attorneys Chad Jacobs and Ann O'Leary, Executive Director John St. Croix, Deputy Executive Director Mabel Ng,

Investigator/Legal Analyst Paul Solis, and Chief Enforcement Officer Richard Mo.

At 7:35 p.m. all Commission staff left the room and returned at 8:07 p.m.

VII. Discussion and votes regarding closed session action and deliberations

Motion 07-07-09-5 (Hansen/Studley): Moved, seconded and unanimously passed (5-0) that the Commission not disclose its deliberations during the closed session.

At 8:25 p.m. the Commission returned to open session.

Executive Director St. Croix made a public announcement of settlements reached between: (1) Ethics staff and the Committee to Protect San Francisco's Most Vulnerable (ID Number 1256081) and treasurer Nanette Lee Miller, to settle Complaint Number 38-031031; (2) Matt Gonzalez for Mayor Committee (ID Number 1258016) and treasurers Enrique Pearce and Randall Knox, to settle Complaint Number 54-031204.

Public Comment:

None.

VIII. Minutes of the Commission meeting of June 11, 2007
Commissioner Hansen stated that within Agenda Item VIII, the minutes should be changed to reflect the fact that she was a Commissioner during only one of the settlements discussed.

Public Comment:

None.

Motion 07-07-09-6 (Gusukuma/Hansen): Moved, seconded and unanimously passed (5-0) that the Commission adopt the minutes of the meeting of June 11, 2007, as amended.

IX. Executive Director's Report

Executive Director St. Croix stated that Ethics staff has received 96% of projected revenue. He also stated that the Board of Supervisors has recently approved the addition of another

full-time staff member; thus, the Commission will see a budget increase of nearly \$500,000. Mr. St. Croix stated that in regard to the City College issue, in 2005 when staff was first presented with an issue concerning the college, staff should have either sent a letter to the college campaign committee requesting an amendment to its filings or reported the matter to the FPPC. Mr. St. Croix stated that in 2005 staff did neither but has since reported the matter to the FPPC.

Commissioner Studley asked how the matter was brought to staff's attention. Mr. St. Croix stated that a series of news articles highlighted the issue. He also stated that in May of 2007 he referred the matter to the FPPC.

Commissioner Hansen inquired as to what requests can be made to the City College campaign committee to amend campaign filings and to file major donor reports. Mr. St. Croix stated that because the Ethics Commission does not have jurisdiction in the matter, the proper response is to make all requests to the FPPC. He also stated that like any other investigation, the FPPC will not be sharing details of its findings. Public Comment:

Milton Marks, as an individual, stated that he does not understand why the Executive Director came to the conclusion that the Commission did not have jurisdiction over the ballot measure committee. He stated that a committee supporting a ballot measure concerning the college is a separate entity from the college itself.

X. Items for Future Meetings

Commissioner Hansen stated she would like more detail in the budget report regarding the new staff positions. She also repeated requests that: staff issue a report on the global canvass issue, the Commission engage in a discussion on SIA enforcement, staff issue a report on delinquent filers, and issue a report on the Bureau of Delinquent Revenue's progress on

delinquent filers. Commissioner Hansen stated that she would like information from staff on a recent contract between the City and EarthLink regarding City-wide wireless internet service. She also asked for more information on press accounts.

Commissioner Gusukuma stated that she would also like more information on the budget report in addition to information on previous discussions of Commission priority on investigations and enforcement.

Public Comment:

Milton Marks stated that he would like a copy of the Executive Director's memo sent to the Chancellor of the City College. He stated that it is important that the College's Board of Trustees and the Chancellor understand the new regulations discussed in the memo in addition to campaign contribution and contractor issues. Mr. Marks also stated that the Commission should require candidates to disclose whether or not they have outstanding debts owed to the Ethics Commission before they are allowed to enter an election.

XI. Public comment on matters appearing or not appearing on the agenda that is within the jurisdiction of the Ethics Commission

None.

XII. Adjournment

Public Comment:

None.

Motion 07-07-09-7 (Hansen/Gusukuma): Moved, seconded and unanimously passed (5-0) that the Commission adjourn.

The meeting was adjourned at 8:45 p.m.

Respectfully submitted,

Paul Solis

Investigator/ Legal Analyst

Ethics Commission



25 Van Ness Ave., Suite 220
San Francisco, CA 94102
Phone 252-3100 Fax 252-3112

**SAN FRANCISCO ETHICS COMMISSION
NOTICE OF REGULAR MEETING**

August 13, 2007 5:30 P.M.

and AGENDA

Room 408 City Hall

1 Dr. Carlton B. Goodlett Place, San Francisco

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- I. Call to order and roll call.
- II. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.
- III. Consideration of draft formal advice letter regarding filing deadlines for initiatives under section 1.113 of the San Francisco Campaign and Governmental Conduct Code. Two members of the Commission have requested that a draft letter regarding questions raised by Melissa Mikesell related to disclosure requirements for the Parking for Neighborhoods Committee, a committee formed primarily to support the placement of an initiative on the November 2007 ballot, be calendared for discussion. The draft advice letter is available at the Commission office and on the on the Commission website. (Discussion and possible action.)
- IV. Consideration of Template of Statements of Incompatible Activities. Commission staff is recommending additional changes to the template previously adopted by the Commission as part of the meet-and-confer process and as a result of ongoing discussions with City departments, boards and commissions. Staff's proposed changes will be discussed and possibly adopted at this meeting. A staff memo will be available in advance at the Commission office and on the Commission website. (Discussion and possible action.)
- V. Proposed Charter Amendment (File No. 071051): Service on Selected Boards and Commissions. Supervisor Alioto-Pier has introduced a proposed Charter amendment that would require certain conditions for service on panels that oversee elections, campaigns, lobbying, conflict of interest and other laws. The measure disqualifies anyone who has been, in the previous four years, a candidate for local office, a campaign consultant or a lobbyist. The proposed measure also disqualifies from service anyone who has been convicted of a felony crime involving moral turpitude or lost a professional license for reasons such as fraud, dishonesty or misconduct. The Board of Supervisors has requested comment from the Ethics Commission. (Discussion and possible action.)

- VI. Fines Collection and Enforcement – Among the Commission’s chief priorities is to improve the ratio of fines assessed to those collected. The Commission has previously discussed ways to increase the amount of fines collected by the fines collection staff and by the Bureau of Delinquent Revenues and whether the Enforcement Staff has a role in this process. The discussion also involves the settlement process and whether it is possible to achieve some form of consistency in both the fines and settlement process. Commissioners will discuss the history of fines collections, settlements, forfeitures and other assessments and possibly make suggestions for improvements. A chart containing the settlement history of the Commission is attached. (Discussion.)
- VII. Closed session. (Discussion and possible action.)
- Closed session held pursuant to Charter section C3.699-13, Brown Act section 54956.9 (a) and (e) and Sunshine Ordinance section 67.10(d) to discuss anticipated and litigation as plaintiff.
- A. Conference with Legal Counsel: Anticipated litigation as plaintiff
- Number of possible cases: 4
- B. Closed session held pursuant to the Ralph Brown Act, Government Code section 54957(b) and the Sunshine Ordinance section 67.10(b): Public Employee Performance Evaluation: Executive Director, Ethics Commission.
- VIII. Discussion and votes regarding closed session action and deliberations. (Discussion and possible action.)
- Discussion and vote pursuant to Brown Act section 54957.1 and Sunshine Ordinance section 67.12 on whether to disclose any action taken or discussions held in closed session regarding anticipated litigation and public employee performance evaluation.
- Motion: The Ethics Commission finds that it is in the best interests of the public (not) to disclose its closed session deliberations re: anticipated litigation and public employee performance evaluation.
- IX. Minutes of the Commission meeting of July 9, 2007. (Discussion and possible action.)
- X. Executive Director’s Report. An update of important Ethics Commission staff activities since the previous monthly meeting. (Discussion.)
- XI. Items for future meetings. Commissioners may propose items for future agendas and the Commission may determine the priority of these items. (Discussion.)

XII. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

XIII. Adjournment.

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August 13, 2007

(Approved September 10, 2007)

Minutes of the Regular Meeting of

The San Francisco Ethics Commission

August 13, 2007

Room 408, City Hall

I. Call to order and roll call.

Chairperson Harriman called the meeting to order at 5:33 p.m.

COMMISSION MEMBERS PRESENT: Susan Harriman, Chairperson; Emi Gusukuma, Vice-Chairperson; Jamienne Studley, Commissioner; Eileen Hansen, Commissioner; Charles Ward, Commissioner.

STAFF PRESENT: John St. Croix, Executive Director; Mabel Ng, Deputy Executive Director; Paul Solis, Investigator/Legal Analyst; Richard Mo, Chief Enforcement Officer.

OFFICE OF THE CITY ATTORNEY: Chad Jacobs, Ann O'Leary, Deputy City Attorneys.

OTHERS PRESENT: Kim Knox; Marc Soloman; Larry Bush; David Pilpel; Holly Thier; Melissa Mikesell; David Waggoner; Joe Lynn; and other unidentified members of the public.

MATERIALS DISTRIBUTED:

- Draft advice letter related to disclosure requirements for the Parking for Neighborhoods Committee, July 26, 2007
- Request for advice from the Sutton law firm, June 7, 2007
- Statement of Incompatible Activities Template
- Memorandum from Executive Director to Ethics Commission

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re: Additional Proposed Changes to SIA Template, August 8, 2007

- Memorandum from Executive Director to Ethics Commission re: Legislation Regarding Qualifications for City Bodies, August 8, 2007

- Chart detailing Ethics Commission settlement history

- Draft Minutes of the July 9, 2007 Regular Meeting of the Ethics Commission

- Executive Director's Report to the San Francisco Ethics Commission for the Meeting of August 13, 2007

- Draft of the pocket resource guide: 10 Rules City Employees Need to Know about Conflict of Interest Laws

II. Public comment on matters appearing or not appearing on the agenda that is within the jurisdiction of the Ethics Commission

David Pilpel recognized the services of Deputy City Attorney Chad Jacobs, who is taking a leave of absence to travel with his family.

Joe Lynn stated that there are currently hundreds of SEI non-filers and submitted a document to the commissioners. He also stated that because there are increased Sunshine requests there is evidence of public distrust. He stated that in order to simplify the Sunshine process, staff could respond to requests by asking the requestor exactly what information was needed. Mr. Lynn stated that the Commission should have a secretary and should also take a more active interest in enforcement matters.

Kim Knox stated that in July, 2007, she filed a complaint with the Ethics Commission. She stated that since that filing, she has received no response from staff about the status of the complaint.

Larry Bush stated that there is a self-correcting measure that the Commission could take by submitting reports to the Board

of Supervisors detailing the effectiveness of ethics laws. Mr. Bush stated that once the Commission does that, solutions to ethics problems could be generated from the public domain as opposed to the Commission itself. He also stated that a series of City Attorney opinions have circumscribed the authority of the Commission and favored the regulated community. Holly Thier requested that the Commission reopen her previously denied waiver request. She stated that she called the Fair Political Practices Commission and the San Francisco Ethics Commission and received faulty advice resulting in late filing. Ms. Thier stated that because she had no activity in her filings there was no harm to the public. In addition, Ms. Thier stated that she knew other individuals who relied on advice from the Ethics Commission who were granted waivers. Marc Solomon stated that Ethics public financing staff and other staff divisions are doing competent work. He also stated that he believed a conflict of interest existed when the Deputy Director supervised the prosecution of the wife of a member of the Sunshine Ordinance Task Force after the Deputy Director had been investigated by the Sunshine Ordinance Task Force. Mr. Solomon stated that this situation, among others, leads to the perception that the grassroots community is unfairly attacked.

David Waggoner stated Ethics staff waged an unfair enforcement action against Carolyn Knee. He also stated that the case has caused problems of perception for the Commission in the public eye. Mr. Waggoner stated that he was not satisfied with the explanation of the final settlement amount in the Knee case and that the Commission should investigate enforcement in the case relating to the appearance of impropriety and actual impropriety.

Commissioner Hansen suggested following up on public comment. Chairperson Harriman stated that the Commission

may not respond to public comment.

III. Consideration of draft formal advice letter

Deputy Director Ng stated that staff received a request for advice from Melissa Mikesell regarding various filing dates for committees under the Campaign Finance Reform Ordinance ("CFRO") section 1.113.

Commissioner Gusukuma inquired as to why staff changed its initial advice. Deputy Director Ng responded that staff had three options in choosing a start date for signature gathering: the date of publication, the date that the proponents received title and summary, or the date that circulation actually began. After reviewing elections law, staff chose the Department of Elections' 180-day time frame, which starts when the proponents receive title and summary.

Commissioner Gusukuma asked if enforcement would be sought against those relying on advice who eventually violated the law. Deputy Director Ng responded that because staff changed its initial advice, enforcement would not occur.

Commissioner Ward inquired as to whether the City Attorney was consulted on this interpretive question of law. Deputy Director Ng responded in the affirmative.

Commissioner Hansen also asked if staff had discussed the advice with other individuals who may be affected besides the City Attorney's Office. Ms. Ng responded that usually staff discusses these matters with only the City Attorney's Office, but at times seeks input from the California Fair Political Practices Commission ("FPPC") or the Los Angeles Ethics Commission. Commissioner Hansen stated that, in regards to response #7 in the draft advice letter, she reads CFRO section 1.113 differently in that referenda and ballot measure committees should be required to disclose sources of contributions from other committees on FPPC Form 460.

Deputy Director Ng responded that if all committees were

required to disclose sources of contributions on Form 460 reports, administrative problems would ensue. She also stated that in lieu of detailed disclosure on Form 460, committees making expenditures are required to file FPPC Form 465, independent expenditure reports. Commissioner Hansen inquired as to why committees would then be required to file two separate forms.

Deputy City Attorney Jacobs stated that the difference between the two forms is that the Form 465 independent expenditure report is a state mechanism for regulating statewide expenditures that relate to local ballot measures.

Commissioner Hansen stated that she did not believe staff's advice letter adequately addressed the issue of sources of contributions and she does not believe the phrase "primarily formed" in response #7 in the draft advice letter is based on any language in CFRO section 1.113.

Commissioner Hansen made a motion, seconded by Commissioner Gusukuma, to adopt staff's advice letter with the exception of response #7.

Public Comment:

Melissa Mikesell suggested looking to the Political Reform Act instead of elections law to interpret the proper date of signature gathering. She stated that under staff's interpretation, the amount of reportable activity may be lacking and by using the date of circulation, more disclosure would occur.

Joe Lynn stated that the FPPC holds interested persons meeting when deciding these issues while Ethics staff does not. He also stated that the consequence of affirming this advice letter is that a committee could contribute large sums of money to a ballot measure committee without detail as to the finances of the committee. Mr. Lynn suggested reworking the entire advice letter and holding an interested persons meeting on the issue. David Pilpel stated that staff should attach any relevant law,

regulation, or FPPC advice to staff's future advice letters. Commissioner Hansen withdrew her previous motion. Commissioner Gusukuma asked if staff could address Ms. Mikesell's comments, to which Deputy Director Ng stated that if staff followed Ms. Mikesell's interpretation on the proper date for signature gathering, the 180 day timeframe mandated by the Department of Elections would be rendered meaningless. Deputy City Attorney Jacobs stated that staff's interpretation was meant to provide a uniform and clear rule to apply to all referenda, recall, and ballot measures.

Motion 07-08-13-1 (Hansen/Gusukuma): Moved, seconded unanimously passed (4-1) (Harriman dissenting) that staff be directed to rework the draft advice letter with emphasis on responses #3 and #7.

IV. Consideration of Template of Statements of Incompatible Activities

Deputy Director Ng stated that staff has suggested seven non-substantive changes to the Statement of Incompatible Activities ("SIA") template to aid in interpreting the SIA provisions.

Commissioner Hansen suggested that staff provide more context in its explanatory memoranda and inquired about language in section III.C.1 of the SIA template. She asked if (a) in the first paragraph of section III.C.1 could be re-worded to track the language of (b) in the same paragraph.

Commissioner Hansen also asked why the 20-day response requirement for advanced written determination was in place only for employees.

Deputy Director Ng responded that the 20-day provision was negotiated with the unions and that no timeline exists to respond to an advanced written determination request from an officer, but that a timeline does exist for an employee. Deputy City Attorney Jacobs stated that the 20-day requirement was

added by unions because they desired equal treatment for all employees from department heads, whereas the same concern doesn't result in consideration of requests from department heads and city officers.

In response to Commissioner Hansen's concern about the language of (a) in the first paragraph of section III.C.1, staff noted that the language would be re-worded.

Public Comment:

David Pilpel stated that he believed officers, as well as employees, should be given the 20-day response time from staff. He also stated that staff should take note of the issue of forum shopping whereby an employee would continue to seek advanced written determination until the determination positively affected the employee.

Motion 07-08-13-2 (Studley/Hansen): Moved, seconded and unanimously passed (5-0) that the Commission adopt staff's proposed changes to the SIA template, as amended.

V. Proposed Charter Amendment

Executive Director St. Croix stated that this measure was referred to the Ethics Commission by the Board of Supervisors. He stated that the legislation restricts individuals from holding certain City offices if that individual had been, among other things, convicted of a felony in the previous four years.

Commissioner Hansen stated that this legislation is exactly the same as an older measure which did not gain full Commission support. She also stated that this legislation seems personality driven and does not seem to address any current problems in City government.

Commissioner Studley, Commissioner Ward, and Chairperson Harriman stated that without a representative from Supervisor Alioto-Pier's office, they did not believe consideration of the legislation was appropriate. Deputy City Attorney Jacobs stated that because this is a proposed Charter amendment, the Board

of Supervisors may take action on this legislation without Ethics Commission consideration or approval.

Commissioner Ward stated further that he was concerned that this legislation attempted to place more strict regulation on City commission members than those placed on City elected officials. Chairperson Harriman suggested calendaring consideration of the legislation until next Commission meeting when a representative from Supervisor Alioto-Pier's office could shed light on the measure.

Public Comment:

David Pilpel stated that he believed this legislation would currently apply to a member of the Sunshine Ordinance Task Force. He also stated that restrictions should be added that no City official or elected official should be appointed if he or she has outstanding campaign fines.

Joe Lynn stated that he believed this legislation was directed at him and has taken steps to reform his professional status.

VI. Fines Collection and Enforcement

Executive Director St. Croix explained the current status of cases remaining within the former Streamlined Enforcement Program. He stated that although enforcement staff has not been involved in fines collection, they are now handling outstanding fines collection for committees with streamlined enforcement issues. Mr. St. Croix also stated that fines collection has seen positive increases over time and provided a status of current fines collection figures.

Commissioner Hansen suggested that more information should be issued to commissioners beforehand regarding fines and enforcement to prepare commissioners adequately. She also stated that an interested persons meeting should be held on these matters in addition to having discussions with the current fines collection officer. Commissioner Hansen suggested that the Commission should have an in depth discussion on

enforcement settlement processes with more public involvement and asked if other commissioners felt public meetings would be beneficial.

Commissioner Gusukuma stated that investigations and enforcement is a large and complex issue for the Ethics Commission and thanked staff for all its work in briefing the Commission on enforcement issues. She stated that currently, enforcement staff is inundated with a heavy workload and suggested adding outside help to aid enforcement staff. She also stated that having an interested persons meeting may not be beneficial at the current time because the issues are too broad.

Chairperson Harriman stated that although the issue is broad and complex, it is important to begin to discuss matters involving investigations and enforcement. She suggested that staff begin to develop a comprehensive outline of enforcement issues to submit to the Commission.

Commissioner Studley stated that she was particularly interested in enforcement processes, such as how staff reaches settlements. She also agreed with Chairperson Harriman's suggestion of outlining enforcement issues for commissioners to consider and felt that until the Commission organized the issues, interested persons meetings may not be practical.

Executive Director St. Croix stated that staff will begin to evaluate investigations and enforcement in order to bring a review of the processes to the Commission in the future.

Deputy City Attorney Jacobs stated that it is important to understand the difference between a fee and a fine. He stated that fines correspond to enforcement matters and that the correct terminology has legal implications.

Commissioner Ward stated that no matter how the Commission begins to review enforcement and investigations, the issues will be in public view. He stated that the public will be present

during Commission consideration of these matters. Commissioner Hansen stated that unless the Commission conducts outreach to inform the public about discussion of enforcement issues at Commission meetings, there may not be enough notice to engage in a robust and beneficial dialogue.

Public Comment:

Joe Lynn stated that interested persons meetings are necessary. He also stated that these issues deserve more Commission involvement as opposed to staff control.

David Pilpel stated that he sees four groups of issues: enforcement priorities, fine and settlement levels, ratios of fines assessed, and public disclosure.

Melissa Mikesell stated that the Commission should reconsider staff forfeiture policies regarding contributor information.

VII. Closed session

Public Comment:

None.

Motion 07-08-13-3 (Studley/Gusukuma): Moved, seconded and unanimously passed (5-0) that the Commission go into closed session to receive legal counsel.

The Commission went into closed session at 7:33 p.m. Present at the closed session were Chairperson Harriman, Vice-Chairperson Gusukuma, Commissioner Studley, Commissioner Hansen, Commissioner Ward, Deputy City Attorneys Chad Jacobs and Ann O'Leary, Executive Director John St. Croix, Deputy Executive Director Mabel Ng, Investigator/Legal Analyst Paul Solis, and Chief Enforcement Officer Richard Mo.

At approximately 8:20 p.m. Commission staff left the room.

VIII. Discussion and votes regarding closed session action and deliberations

Public Comment:

None.

07-08-13-4 (Gusukuma/Studley): Moved, seconded and unanimously passed (5-0) that the Commission not disclose its deliberations during the closed session.

At 9:38 p.m. the Commission returned to open session.

Executive Director St. Croix made a public announcement of a settlement reached between: The Ethics Commission and Citizens for Reform Leadership #1 (ID No. 1261911) and Treasurer Wade Randlett to settle Ethics complaint No. 05-060927.

IX. Minutes of the Commission meeting of July 9, 2007

Executive Director St. Croix noted that "Milton Marks" should be added to the list of "others present" at the July 9, 2007 meeting.

Commissioner Hansen stated that within Agenda Item V, "but was lacking in rationale for the smaller amount" should be inserted after "she believed staff had given some rationale for its much larger settlement offer at the previous meeting."

Commissioner Hansen stated that within Agenda Item IX, the word "should" ought to replace "could" in the sentence "staff could have sent a letter to the college requesting an amendment to its filings or reported the matter to the FPPC."

Commissioner Hansen stated that within Agenda Item IX, "amend campaign filings" should be inserted at the end of the sentence "Commissioner Hansen inquired as to what requests can be made to the City College to file major donor reports."

Commissioner Hansen stated that within Agenda Item X, "she also repeated requests" should replace "she also stated." Also within Agenda Item X, Commissioner Hansen stated that "the Commission engage in discussions" should replace "staff should issue a report" in the sentence "she also repeated requests that: staff issue a report on the global canvass issue..."

Commissioner Hansen stated that within the public comment section of Agenda Item X, the word "continually" should be

deleted from the last sentence of Milton Mark's statement. Chairperson Harriman asked staff to review the meeting tapes to make certain the proposed amendments are appropriate.

Public Comment:

David Pilpel stated that the announcement of settlements in the minutes could simply refer to a link to the Commission's website. He also stated that any reference in the minutes to "City College" should be changed to the "City College campaign committee."

Motion 07-08-13-5 (Hansen/Gusukuma): Moved, seconded and unanimously passed (5-0) that the Commission adopt the minutes of the meeting of July 9, 2007, as amended if appropriate.

X. Executive Director's Report

Executive Director St. Croix noted that the Bureau of Delinquent Revenues is currently in court pursuing collection of outstanding balances for certain campaign committees. He also stated that although Mr. Lynn stated that there are hundreds of SEI non-filers contained in a large document submitted to the commissioners, the list he provided repeats names and contains many blank pages.

Commissioner Hansen suggested moving the Executive Director's Report and the Commission minutes up on the agenda. She also inquired as to the status of 2006 global forfeiture assessment to which Mr. St. Croix responded that the Commission had discussed at the May 2007 meeting that the global forfeiture assessment may not be the best use of staff time. Commissioner Hansen inquired as to the status of posting data from electronic filing to which Mr. St. Croix responded that typically, within 24 hours of filing, staff posts the information on the Commission's online campaign finance database.

Commissioner Hansen inquired as to how staff monitors SEI non-filing and suggested a more aggressive approach to

ensuring compliance. Executive Director St. Croix stated that staff monitors SEI non-filing by a series of letters and phone calls. Commissioner Hansen thanked staff for its work on outreach and education and suggested that staff broaden its Lobbyist Ordinance training sessions to include more members of the public.

Executive Director St. Croix stated that the October and November meetings will be held one week later due to holidays.

Public Comment:

David Pilpel stated that he hoped the Commission would begin to develop a list of those individuals with outstanding balances and a record of SEI non-filing. He also stated that in the draft pocket resource guide, staff should include the phrase "officers and employees."

XI. Items for future meetings

Commissioner Hansen suggested rephrasing the name of the "Items for future meetings" Agenda Item be renamed to "Items for future meetings or follow up" to address issues raised during public comment time.

Public Comment:

None.

XII. Public comment on matters appearing or not appearing on the agenda that is within the jurisdiction of the Ethics Commission

None.

XIII. Adjournment

Public Comment:

None.

Motion 07-08-13-6 (Gusukuma/Studley): Moved, seconded and unanimously passed (5-0) that the Commission adjourn.

The meeting was adjourned at 10:02 p.m.

Respectfully submitted,

Paul Solis
Investigator/ Legal Analyst



**SAN FRANCISCO ETHICS COMMISSION
NOTICE OF REGULAR MEETING**

September 10, 2007 5:30 P.M.

and AGENDA

Room 408 City Hall

1 Dr. Carlton B. Goodlett Place, San Francisco

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- I. Call to order and roll call.
- II. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.
- III. Statements of Incompatible Activities. The Commission has adopted a common template for Statements of Incompatible Activities (SIAs). At this meeting, the Commission will consider draft SIAs for initial adoption. Representatives of departments under consideration may attend to make comment on SIAs and possibly answer questions from Commissioners. Departments under consideration include: the Film Commission; Public Library and Library Commission; Fire Department and Commission; Board of Appeals; Citizens' General Obligation Bond Oversight Committee; Southeast Community Facility Commission; and Ethics Commission. In addition, the Commission will also consider SIAs for FINAL adoption. These include: The Department of Human Resources; Airport Commission; Arts Commission; Department of Child Support Services; Department of Children, Youth and Their Families; Office of the Controller; Department of Elections and Elections Commission; Employees' Retirement System; Office of the Mayor; Sheriff's Department; and Department and Commission on the Status of Women. SIAs that are given final adoption will not go into effect until thirty days after all SIAs have been finally adopted. The draft SIAs for these departments are available at the Commission office and on the Commission website. (Discussion and possible action.)
- IV. Proposed Charter Amendment (File No. 071051): Service on Selected Boards and Commissions. Supervisor Alioto-Pier has introduced a proposed Charter amendment that would require certain conditions for service on panels that oversee elections, campaigns, lobbying, conflict of interest and other laws. The measure disqualifies anyone who has been, in the previous four years, a candidate for local office, a campaign consultant or a lobbyist. The proposed measure also disqualifies from service anyone who has been convicted of a felony crime involving moral turpitude or has lost a professional license for reasons such as fraud, dishonesty or

misconduct. The Board of Supervisors has requested comment from the Ethics Commission. (Discussion and possible action.)

- V. Consideration of whether the Commission should take a position on whether the Secretary of State should exercise her authority under Government Code section 84606 to eliminate the requirement that persons who file financial disclosure statements and reports online or electronically also file their reports on paper, beginning with the first statement or report required to be filed on or after January 1, 2008. The Secretary of State and the Fair Political Practices Commission will hold a public hearing on this issue on September 26, 2007 at 10:00 a.m. (Discussion and possible action.)

- VI. Closed session. (Discussion and possible action.)

Closed session held pursuant to Charter section C3.699-13, Brown Act section 54956.9 (a) and (c) and Sunshine Ordinance section 67.10(d) to discuss anticipated litigation as plaintiff.

Conference with Legal Counsel: Anticipated litigation as plaintiff

Number of possible cases: 1

- VII. Discussion and votes regarding closed session action and deliberations. (Discussion and possible action.)

Discussion and vote pursuant to Brown Act section 54957.1 and Sunshine Ordinance section 67.12 on whether to disclose any action taken or discussions held in closed session regarding anticipated litigation.

Motion: The Ethics Commission finds that it is in the best interests of the public (not) to disclose its closed session deliberations re: anticipated litigation.

- VIII. Minutes of the Commission meeting of August 13, 2007. (Discussion and possible action.)

- IX. Executive Director's Report. An update of important Ethics Commission staff activities since the previous monthly meeting. (Discussion.)

- X. Items for future meetings. Commissioners may propose items for future agendas and the Commission may determine the priority of these items. (Discussion.)

- XI. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

- XII. Adjournment.

Know Your Rights Under the Sunshine Ordinance

Government's duty is to serve the public, reaching its decision in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review. For more information on your rights under the Sunshine Ordinance or to report a violation of the ordinance, contact Frank Darby by mail to Administrator, Sunshine Ordinance Task Force, 1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco CA 94102-4689; by phone at 415 554 7724; by fax at 415 554 7854; or by email at soff@sfgov.org. Citizens interested in obtaining a free copy of the Sunshine Ordinance can request a copy from Mr. Darby or by printing Chapter 67 of the San Francisco Administrative Code on the Internet, <http://www.sfgov.org/sunshine/>. The ringing of and use of cell phones, pagers and similar sound-producing electronic devices are prohibited at this meeting. Please be advised that the Chair may order the removal from the meeting room of any person(s) responsible for the ringing or use of a cell phone, pager, or other similar sound-producing devices.

This location is wheelchair accessible. In order to assist the City's efforts to accommodate persons with severe allergies, environmental illnesses, multiple chemical sensitivity, or related disabilities, attendees at public meetings are reminded that other attendees may be sensitive to various chemical-based products. Please help the City accommodate these individuals. Individuals and entities that influence or attempt to influence local legislative or administrative action may be required by the San Francisco Lobbyist Ordinance [SF Campaign & Governmental Conduct, Code § 2.100] to register and report lobbying activity. For more information about the Lobbyist Ordinance, please contact the Ethics Commission at 25 Van Ness Avenue, Suite 220, San Francisco, CA 94102; telephone (415) 252-3100; fax (415) 252-3112 and web site www.sfgov.org/ethics

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September 10, 2007

(Approved October 15, 2007)

Minutes of the Regular Meeting of

The San Francisco Ethics Commission

September 10, 2007

Room 408, City Hall

I. Call to order and roll call.

Chairperson Harriman called the meeting to order at 5:32 p.m.

COMMISSION MEMBERS PRESENT: Susan Harriman, Chairperson; Emi Gusukuma, Vice-Chairperson; Jamiennie Studley, Commissioner; Eileen Hansen, Commissioner; Charles Ward, Commissioner.

STAFF PRESENT: John St. Croix, Executive Director; Mabel Ng, Deputy Executive Director; Paul Solis, Investigator/Legal Analyst; Richard Mo, Chief Enforcement Officer.

OFFICE OF THE CITY ATTORNEY: Jon Givner, Ann O'Leary, Deputy City Attorneys.

OTHERS PRESENT: Jim Moran, Christina Fong, Department of Human Resources; Sarah Ballard, Office of Supervisor Michela Alioto-Pier; Louis Voccia, Office of the Controller; Donna Marion, Library Commission; Toye Moses, Southeast Community Facility Commission; Melinda Self, Department of Child Support Services; Stefanie Coyote, Film Commission; David Looman; David Pilpel; and other unidentified members of the public.

MATERIALS DISTRIBUTED:

- Film Commission Statement of Incompatible Activities

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- Library Commission Statement of Incompatible Activities
- Fire Department Statement of Incompatible Activities
- Department of Human Resources Statement of Incompatible Activities
- Board of Appeals Statement of Incompatible Activities
- Citizens' General Obligation Bond Department Statement of Incompatible Activities
- Southeast Community Facility Commission Statement of Incompatible Activities
- Department of Child Support Services Statement of Incompatible Activities
- Office of the Controller Statement of Incompatible Activities
- Arts Commission Statement of Incompatible Activities
- Sheriff's Department Statement of Incompatible Activities
- Airport Commission Statement of Incompatible Activities
- Department of Youth, Children and their Families Statement of Incompatible Activities
- Commission on Status of Women Statement of Incompatible Activities
- Mayor's Office Statement of Incompatible Activities
- Department of Elections Statement of Incompatible Activities
- Employees' Retirement System Statement of Incompatible Activities
- Memorandum from Executive Director to Ethics Commission re: Legislation Regarding Qualifications for City Bodies, August 8, 2007
- Memorandum from Executive Director to Ethics Commission re: Final Approval of Statement of Incompatible Activities, August 27, 2007
- Proposed Schedule of SIA Hearings
- Notice of Public Hearing from the California Secretary of State and the Fair Political Practices Commission
- Draft Minutes of the August 13, 2007 Regular Meeting of the

Ethics Commission

- Executive Director's Report to the San Francisco Ethics Commission for the Meeting of September 10, 2007

II. Public comment on matters appearing or not appearing on the agenda that is within the jurisdiction of the Ethics Commission

David Looman stated that he had recently received a letter from the Ethics Commission informing him of a late fine. Mr. Looman stated that he had documentation that staff was mistaken in assessing the late fine.

III. Statements of Incompatible Activities

Statements for Final Adoption

Department of Human Resources

Deputy Director Mabel Ng stated that other than template changes, the only changes to the version of the draft Statement of Incompatible Activities ("SIA") that the Ethics Commission initially approved on April 9, 2007 are those that appear in section III.A.1.c. These are technical corrections to make the clauses of the provision consistent. Jim Moran, on behalf of the Department of Human Resources, stated that he had nothing to add to Ms. Ng's assessment.

Arts Commission

Deputy Director Ng stated that on June 11, 2007, the Commission considered for final approval the draft SIA for this department. At the meeting, the Commission asked that staff contact the Arts Commission to determine whether it would accept changes to the example in section IV.C.3. regarding the use of an officer's title and position for identification purposes in the City's Voter Information Pamphlet. She stated that staff has done so and is informed that the Department agrees with the change.

Department of Child Support Services

Deputy Director Ng stated that on June 11, 2007, the Ethics

Commission considered for final approval the draft SIA for this department. She stated that issues raised at that meeting, concerning the personal use of City vehicles, were covered in the City code and have been deleted from the draft SIA. Melinda Self, on behalf of the Department of Child Support Services, stated that she had nothing to add to Ms. Ng's assessment.

Commissioner Ward asked if an attorney who is not engaged in the practice of law as an employee of Child Services would be prohibited from practicing law outside the City department. Ms. Self responded that the attorney would not be prohibited from outside practice.

Deputy City Attorney Jon Givner stated that the SIA does not address the situation of attorneys employed by the City as non-practitioners because there is no real issue with public perception of impropriety.

Department of Children, Youth and their Families

Deputy Director Ng stated that other than template changes, there are no changes to the version of the draft SIA that was initially approved by the Ethics Commission on February 12, 2007.

Airport Commission

Deputy Director Ng stated that other than template changes, there are no changes to the version of the draft SIA that was initially approved by the Ethics Commission on April 9, 2007.

Public Comment:

None.

Motion 07-09-10-1 (Studley/Ward): Moved, seconded and unanimously passed (5-0) that the Commission finally approve the SIAs for the Department of Human Resources; Arts Commission; Department of Child Support Services; Department of Children, Youth and their Families; and Airport Commission.

Office of the Controller

Deputy Director Ng stated that other than template changes, there are two changes to the draft SIA that was initially approved by the Ethics Commission on October 23, 2006. In section III.A.1.b., language has been added to include an exception for employment of or compensation received by an employee or officer's spouse or registered domestic partner, which makes this consistent with similar provisions in other draft SIAs initially approved by the Commission. In the second example in section IV.C.2., language relating to the use of an officer's title and position has been changed so that it conforms with the Commission's recommendations and is consistent with similar provisions in the draft SIAs of the Arts Commission and the Department of Child Support Services.

Ms. Ng also stated that one union asked that section III.A.1.a. and b. be amended to replace the prohibition on identified activities with a notice requirement, so that the identified activities are proscribed unless the employee notifies the department prior to contracting with the City or being employed by or receiving compensation as a registered lobbyist. She stated that the department has not agreed to these suggestions and that staff agrees with the department that simple disclosure is not sufficient in these instances. Louis Voccia, on behalf of the Office of the Controller, stated that he had nothing to add to Ms. Ng's assessment.

Chairperson Harriman stated that in section III.A.1.b. the word "employee" should be changed to "employee's."

Commissioner Ward stated that in section IV.C.3.'s example, an employee could include his or her official City title while signing a ballot argument though the language of the SIA does not specifically address the situation. Chairperson Harriman asked if using official City titles is a common practice on ballot arguments. Deputy City Attorney Givner responded that it is a

common practice and that the City Attorney's Office informs City employees that using an official title must be for identification purposes only. Mr. Givner stated that state and local law is silent on this direct issue.

Chairperson Harriman, Commissioner Ward, and Commissioner Studley suggested deleting the example from the SIA. Ms. Ng agreed with the suggestion.

Department of Elections

Deputy Director Ng stated that at the June 11 meeting, the Commission expressed concerns regarding sections III.A.1.b. and c. The new changes state that the term "proponent" is defined under the California Elections Code, and clarify that employment, compensation or gifts would be barred if they are provided to an officer or employee in connection with a proposed initiative, referendum or recall petition.

Employees' Retirement System

Deputy Director Ng stated that other than template changes, the only changes to the version of the draft SIA that the Ethics Commission initially approved on February 12, 2007 are those that appear in section III.A.1.c., which make the language consistent with similar language that appears in other draft SIAs initially approved by the Commission.

Chairperson Harriman noted a typo in III.A.1.a. and also stated that the example should include a prohibition on the personal trading of securities after the completion of a Retirement System transaction as well as prior to the transaction. Deputy Director Ng and Deputy City Attorney Givner stated that they would discuss the issue with the department.

Mayor's Office

Deputy Director Ng stated that other than template changes, the only changes to the version of the draft SIA that the Ethics Commission initially approved on October 23, 2007 are those in section III.A.3.c., adding "the employee or officer knows has

applied for in the last 12 months."

Ms. Ng also stated that one union asked that sections III.A.3.b. and c. be amended to replace the prohibition on identified activities with a notice requirement, so that the identified activities are proscribed unless the employee has notified the department that he or she plans to engage in such activities. The department has not agreed to these suggestions. Ms. Ng stated that staff agrees with the department that disclosure may not be enough in these instances.

Sheriff's Department

Deputy Director Ng stated that other than template changes, staff recommends no changes to the version of the draft SIA that was initially approved by the Ethics Commission on November 13, 2006.

Ms. Ng also stated that one union asked that section III.A.1.a. and b. be amended to replace the prohibition on identified activities with a notice requirement, so that the identified activities are proscribed unless the employee has notified the department that he or she wishes to serve on a board that receives funding from the department, or that he or she wishes to apply for or enter into a contract with the department. The department has not agreed to these suggestions. Ms. Ng stated that staff agrees with the department that disclosure may not be enough in these instances.

Commissioner Ward asked why any ownership interest in a legal entity is permissible in section III.A.1.b. Deputy Director Ng stated that many conflict of interest laws use a ten percent allowable interest; the Sheriff's department most likely used that figure in its SIA. Commissioner Ward asked why this figure doesn't appear in all SIAs, to which Ms. Ng responded that each department chooses what it believes to be an allowable ownership interest. Deputy City Attorney Givner added that state law also governs this situation.

Commissioner Hansen suggested standardizing the use of a hyphen when discussing "non-profits" in the SIA.

Commission on Status of Women

Deputy Director Ng stated that other than template changes, there are no changes to the version of the draft SIA that was initially approved by the Ethics Commission on February 12, 2007.

Public Comment:

None.

Motion 07-09-10-2 (Hansen/Gusukuma): Moved, seconded and unanimously passed (5-0) that the Commission finally approve the SIAs for the Office of the Controller; Department of Elections and Elections Commission; Mayor's Office; Sheriff's Department; and Department and Commission on the Status of Women, as amended.

Statements for Initial Adoption

Library Commission

Donna Marion, on behalf of the Library Commission, stated that Library Commission staff developed the draft SIA and consulted with Ethics staff. She stated that the Library Commission has approved the SIA.

Public Comment:

None.

Motion 07-09-10-3 (Hansen/Gusukuma): Moved, seconded and unanimously passed (5-0) that the Commission initially approve the draft SIA for the Library Commission.

Southeast Community Facility Commission

Toye Moses, on behalf of the Southeast Community Facility Commission ("SCFC"), stated that SCFC staff developed the draft SIA and consulted with Ethics staff. Mr. Moses also stated that SCFC has approved of the SIA.

Commissioner Hansen inquired as to why SCFC requires an SIA. Mr. Moses stated that SCFC has several tenants in its

building and makes leasing recommendations that the City Attorney ultimately approves. Deputy City Attorney Givner stated that although SCFC does not make actual governmental decisions, it is listed as a City agency whose employees must file Statements of Economic Interests ("SEI") under the Conflict of Interest Code. He stated that any agency listed is considered a decision-making body requiring SIA application.

Public Comment:

None.

Motion 07-09-10-4 (Studley/Hansen): Moved, seconded and unanimously passed (5-0) that the Commission initially approve the draft SIA for the Southeast Community Facility Commission.

Film Commission

Stefanie Coyote, on behalf of the Film Commission, stated that the draft SIA was created by addition to previously existing Commission guidelines. She also stated that the Film Commission reviewed the SIA and has informally approved it. Commissioner Ward asked staff if the activity detailed in section III.A.3.b. is prohibited via its deletion from the draft SIA.

Deputy Director Ng responded that the section was deleted because conflicts of interest laws already address the activity. Ms. Coyote stated that she was comfortable with the deletion.

Public Comment:

None.

Motion 07-09-10-5 (Studley/Hansen): Moved, seconded and unanimously passed (5-0) that the Commission initially approve the draft SIA for the Film Commission.

Fire Department

Deputy Director Ng stated that the Fire Commission has approved the draft SIA and that many provisions track language in the Department of Building Inspection's ("DBI") SIA. Ms. Ng also stated that the Fire Commission has deleted language granting itself the authority to issue advanced written

determination.

Commissioner Ward asked if the SIA definition of "family member" was present in all SIAs. Ms. Ng responded in the affirmative. Commissioner Ward also asked what constituted a "remote" interest in SIA. Ms. Ng responded that "remote" is defined in state law.

Commissioner Hansen asked why the SIA did not define "remote interest" and "non-interest." Deputy City Attorney Givner stated that the Fire Department probably sought to use definitions and specific language from California Government Code section 1090. Ms. Ng and Mr. Givner stated that further inquiries could be made to the department to ascertain its intent. Commissioner Hansen also suggested two typographical changes.

Commissioner Hansen inquired as to why certain aspects of DBI's SIA were absent from the Fire Department's SIA. Ms. Ng responded that some provisions may not be relevant, but that staff will review both SIAs to make certain that provisions in the SIAs conform is appropriate.

Public Comment:

None.

Motion 07-09-10-6 (Hansen/Studley): Moved, seconded and unanimously passed (5-0) that the Commission initially approve the draft SIA for the Fire Department, as amended.

Board of Appeals

Deputy Director Ng stated that two changes to the Board of Appeals SIA had been made in section III.A.3.

Public Comment:

None.

Motion 07-09-10-7 (Hansen/Studley): Moved, seconded and unanimously passed (5-0) that the Commission initially approve the draft SIA for the Board of Appeals.

Citizens' General Obligation Bond Oversight Committee and

Audit Review Board

Deputy Director Ng stated that many of the SIA deletions of the word "employee" are due to the fact that the Citizens' General Obligation Bond Oversight Committee does not have any employees. She also stated that she had been informed that the committee had reviewed and approved the draft SIA. Commissioner Hansen asked why the word "employee" still appears in the SIA at various points. Ms. Ng responded that "employee" could be deleted throughout the SIA with inclusion of the word "officer" as a replacement.

Public Comment:

None.

Motion 07-09-10-8 (Hansen/Studley): Moved, seconded and unanimously passed (5-0) that the Commission initially approve the draft SIA for the Citizens' General Obligation Bond Oversight Committee, as amended.

Ethics Commission

Deputy Director Ng stated that during previous consideration of the SIA, the Ethics Commission expressed concern with section III.A.1.b. Since that time, staff has modified the section. Commissioner Gusukuma stated that she did not believe that advanced written determination, regarding a specific activity, should be granted as an exception when the SIA prohibits the activity.

Chairperson Harriman added that attorneys who are employees or Commissioners of the City are also members of bar associations that endorse candidates for office. She stated that this should be a consideration in reworking section III.A.1.b. Commissioner Hansen stated that political groups, like bar associations, should also be considered.

Commissioner Studley stated that she agreed with Commissioner Gusukuma, and suggested deleting "unless an officer or employee requests and receives an advanced written

determination under subsection C that the activity is not incompatible" from the example in section III.A.1.b.

Deputy Director Ng stated that section III.A.1. would remedy some issues arising from the language differences in section III.A.1.b, in that employees may request advanced written determination in specific situations where, based on the circumstances, the activities are not incompatible.

Commissioner Studley asked if the word "infrequently" in section III.A.1.b. would pose potential interpretive problems. Deputy City Attorney Givner stated that a City Commissioner, for example, who sits on the board of an organization that makes several endorsements for political office, could seek advanced written determination on the incompatibility or compatibility of the board position.

Commissioner Gusukuma inquired as to whether the SIA prohibitions apply to online activity. Executive Director St. Croix suggested inserting "(including electronic formats)" into the SIA.

Public Comment:

None.

Motion 07-09-10-9 (Studley/Gusukuma): Moved, seconded and unanimously passed (5-0) that the Commission initially approve the draft SIA for the Ethics Commission, as amended.

IV. Proposed Charter Amendment: Service on Selected Boards and Commissions

Sarah Ballard, on behalf of the Office of Supervisor Michela Alioto-Pier, stated that the goal in introducing the legislation was to ensure the independence of all City Commissions with quasi-judicial functions and to establish qualifications.

Chairperson Harriman inquired as to whether the legislation would affect current sitting Commissioners, to which Ms. Ballard responded that the legislation would have no retroactive effect. In response to Ms. Ballard's assertion that each of the agencies

specified in the proposed legislation were adjudicatory, Commissioner Gusukuma asked how the legislation would apply to the Elections Commission and the Sunshine Ordinance Task Force ("SOTF"). Ms. Ballard responded that the SOTF does have some adjudicatory power and that by its nature, the Elections Commission should have independency from the candidates that it seeks to regulate.

Commissioner Ward asked if this legislation applies to elected officials who have been candidates previously, to which Ms. Ballard responded that it did not. Commissioner Ward also asked why the standard is lower for elected officials, to which Ms. Ballard responded that elected officials are subject to public scrutiny regarding their qualifications, while appointed Commissioners are not.

Commissioner Hansen inquired why this legislation was introduced two years after identical legislation gained no support for passage. Ms. Ballard responded that her office felt that the purpose of the legislation was still relevant and that the retroactivity of the previous legislation had been removed. Commissioner Hansen asked if the legislation was aimed at actual problems or instances of misconduct, to which Ms. Ballard responded that it was not.

Commissioner Studley stated that she was unsure as to why the legislation employs a four-year prohibition; Chairperson Harriman agreed and suggested a shorter window.

Commissioner Studley asked if there had been consideration of restrictions concerning prohibited post-service activity. Ms. Ballard stated that she would return to Supervisor Alioto-Pier with suggestions. She also stated that the legislation has been introduced but had not been scheduled into committee.

Commissioner Hansen stated that she does not support the legislation and does not want Supervisor Alioto-Pier to be under the impression that the Commission supports the legislation.

Public Comment:

None.

V. Consideration of whether the Commission should take a position on whether the Secretary of State should exercise her authority under Government Code section 84606 to eliminate the requirement that persons who file financial disclosure statements and reports online or electronically also file their reports on paper, beginning with the first statement or report required to be filed on or after January 1, 2008

Executive Director St. Croix stated that currently, committees that raise over \$5,000 must file both paper and electronic reports. Mr. St. Croix stated that staff supports the idea of moving toward an all-electronic method of campaign reporting and urged the Commission to support steps moving in that direction.

Public Comment:

None.

Motion 07-09-10-10 (Studley/Gusukuma): Moved, seconded and unanimously passed (5-0) that the Commission support the Secretary of State in exercising her authority under Government Code section 84606 to eliminate the requirement that persons who file financial disclosure statements and reports online or electronically also file their reports on paper.

VI. Closed session

Motion 07-09-10-11 (Gusukuma/Studley): Moved, seconded and unanimously passed (5-0) that the Commission go into closed session to receive legal counsel.

The Commission went into closed session at 7:16 p.m. Present at the closed session were Chairperson Harriman, Vice-Chairperson Gusukuma, Commissioner Studley,

Commissioner Hansen, Commissioner Ward, and Deputy City Attorney Ann O'Leary.

VII. Discussion and votes regarding closed session action and deliberations

At 7:52 p.m. the Commission returned to open session.

Motion 07-09-10-12 (Ward/Gusukuma): Moved, seconded and unanimously passed (5-0) that the Commission not disclose its deliberations during the closed session.

Public Comment:

None.

VIII. Minutes of the Commission meeting of August 13, 2007

Commissioner Hansen stated that in Agenda item II, paragraph six, the word "existed" should replace "exists" and that "after the Deputy Director had been investigated by the Sunshine Ordinance Task Force" should be inserted into the paragraph. She also stated that the word "targeted" should replace "prejudiced" within the same paragraph.

Commissioner Hansen stated that "only for employees" should be inserted at the end of paragraph two, Agenda Item IV.

Commissioner Studley stated that the word "be" should be inserted into the last sentence of the first paragraph of public comment in Agenda Item V.

Commissioner Ward stated that in Agenda Item VI, he did not definitively state that public comment time would be a sufficient substitution for holding an interested persons meeting.

Commissioner Hansen inquired as to whether or not the meeting tapes had been reviewed to verify the accuracy of proposed changes to the minutes. Staff Investigator Paul Solis responded that the tapes had been reviewed in totality and changes were made where appropriate. Chairperson Harriman suggested that Commissioners contact staff before meetings with minor proposed changes to the minutes.

Public Comment:

None.

Motion 07-09-10-13 (Hansen/Ward): Moved, seconded and unanimously passed (5-0) that the Commission adopt the minutes of the meeting of August 13, 2007, as amended if appropriate.

IX. Executive Director's Report

Executive Director St. Croix stated that staff will most likely follow the course of the California Fair Political Practices Commission ("FPPC") in determining how information regarding complaints shall be distributed. He stated that the FPPC is currently reviewing its policy and may make modifications. Commissioner Hansen asked how staff currently logs complaints. Mr. St. Croix responded that if a complaint falls within the jurisdiction of the Ethics Commission, the complaint will be logged. If not, the complaint will not be logged. Mr. St. Croix also stated that staff has hired two additional auditors. Mr. St. Croix also stated that the current number of SEI non-filers is down to 16, and most of the remaining non-filers have been located and have agreed to file soon.

Commissioner Hansen asked if staff currently checks with department heads to ensure compliance with SEI filing. Mr. St. Croix responded that because staff has recently increased its size, spot checks with department heads may be possible. Commissioner Hansen inquired as to why certain fines in the Executive Director's Report were labeled "uncollectable." Mr. St. Croix responded that those fines are linked to individuals who have left the jurisdiction.

Public Comment:

None.

X. Items for future meetings

Chairperson Harriman stated that she, Executive Director St. Croix, and Deputy City Attorney Givner met recently to discuss complaints by the California Political Treasurers Association

involving Commission practices and policies. She stated that the meeting was beneficial.

Chairperson Harriman also stated that on September 16, 2007, various members of Ethics staff and Commissioner Gusukuma will travel to Victoria, Canada, for the 29th Council on Governmental Ethics Laws conference.

Commissioner Hansen stated that at the last meeting she suggested this agenda item be renamed "Items for future meetings and follow-up." She stated that she would like staff to follow-up on some of the issues presented at the current meeting and would also like reports back to the Commission on the status of requested follow-ups. Commissioner Hansen inquired as to whether there is automatic staff response to issues raised during public comment. She stated that she believed issues presented during public comment to be significant and worthy of follow-up by staff.

Deputy City Attorney Givner stated that individual Commissioners may request informal follow-up; however, where no Commission action has officially been taken, the Executive Director may use his discretion to take action or not. Commissioner Ward stated that his observation has been that because certain members of the public do not reappear for public comment regarding their issues, there may be an assumption that staff has adequately addressed the issues. Commissioner Studley stated that she agrees with Commissioner Hansen's assessment regarding staff follow-up. She stated that it would be useful to Commissioners to know how staff is handling certain issues.

Executive Director St. Croix stated that Commissioners are free to request that staff follow-up on issues presented during public comment.

Commissioner Studley suggested that, rather than Commissioners judging what issues warrant follow-up from

staff, the Executive Director's Report could highlight staff follow-up based on issues raised during the previous meeting's public comment. The Commission would then decide whether the Report adequately addressed the issues. Chairperson Harriman suggested that staff make a recommendation on how to handle this matter.

Commissioner Hansen inquired about legislation from Supervisor Daly's Office that was intended to be calendared for the current meeting. Mr. St. Croix stated that Supervisor Daly's Office informed him, prior to the Commission meeting, that they wished to redraft the legislation and would make a presentation at a future meeting.

Public Comment:

None.

XI. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission

None.

XII. Adjournment

Public Comment:

None.

Motion 07-09-10-14 (Gusukuma/Hansen): Moved, seconded and unanimously passed (5-0) that the Commission adjourn. The meeting was adjourned at 8:31 p.m.

Respectfully submitted,

Paul Solis

Investigator/ Legal Analyst

Ethics Commission



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**SAN FRANCISCO ETHICS COMMISSION
NOTICE OF SPECIAL MEETING
October 15, 2007 5:30 P.M.
and AGENDA**

DOCUMENTS DEPT.

OCT 12 2007

Room 408 City Hall

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1 Dr. Carlton B. Goodlett Place, San Francisco

(Note: Due to the October 8, 2007 holiday, this meeting will occur on a date different from the Ethics Commission's regular meetings.)

(Note: Due to the November 12, 2007 holiday, the next monthly Commission meeting will be held a week earlier than normal, on November 5, 2007.)

- I. Call to order and roll call.
- II. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.
- III. Statements of Incompatible Activities. The Commission has adopted a common template for Statements of Incompatible Activities (SIAs). At this meeting, the Commission will consider draft SIAs for initial adoption. Representatives of departments under consideration may attend to make comment on SIAs and possibly answer questions from Commissioners. Departments under consideration include: the Recreation and Park Department and Commission and the Mayor's Office on Economic and Workforce Development Department. The draft SIAs for these departments are available at the Commission office and on the Commission website. (Discussion and possible action.)
- IV. Consideration of proposed legislation introduced by Supervisor Daly to amend the Campaign Finance Reform Ordinance to consolidate the public financing programs for the Mayor and the Board of Supervisors. Supervisor Daly or a member of his staff will make a presentation. (Discussion and possible action.)
- V. Consideration of proposed legislation introduced by Supervisor Daly to amend section 1.161 of the Campaign and Governmental Conduct Code to require persons making independent expenditures to pay for mass mailings that support or oppose candidates for City elective office to file those mailings and itemization of costs with the Ethics Commission. Supervisor Daly or a member of his staff will make a presentation. (Discussion and possible action.)

- VI. Consideration of proposed legislation introduced by Supervisor Daly to amend the Campaign and Governmental Conduct Code to add a section to require that persons conducting or paying for telephone persuasion polls to disclose information to call recipients during the telephone calls and to file disclosure statements with the Ethics Commission. (Discussion and possible action.)
- VII. Consideration of proposed legislation introduced by Supervisor Daly to amend Article III Chapter 5 of the Campaign and Governmental Conduct Code to prohibit members of boards, commissions and advisory bodies from participating in a meeting when compromised by alcohol or illegal drugs. Supervisor Daly or a member of his staff will make a presentation. (Discussion and possible action.)
- VIII. Consideration of appeal of John Rinaldi, candidate for Mayor, for certification to receive public financing from the Mayoral Election Campaign Fund. The Executive Director has declined to certify Mr. Rinaldi as eligible to receive public funds because documents submitted by Mr. Rinaldi do not indicate that he has received the requisite \$25,000 in qualifying contributions from at least 250 contributors by the 70th day before the election. Under section 1.142 of the Campaign Finance Reform Ordinance, Mr. Rinaldi may appeal the Executive Director's decision to the Ethics Commission. (Discussion and possible action.)
- IX. Minutes of the Commission meeting of September 10, 2007. (Discussion and possible action.)
- X. Executive Director's Report. An update of important Ethics Commission staff activities since the previous monthly meeting. (Discussion.)
- XI. Closed session. (Discussion and possible action.)
- Closed session held pursuant to Charter section C3.699-13, Brown Act section 54956.9 (a) and (c) and Sunshine Ordinance section 67.10(d) to discuss actual litigation as defendant.
- A. Conference with Legal Counsel: Actual litigation as defendant
- Committee On Jobs Candidate Advocacy Fund et.al. v. Dennis J. Herrera et. al., Case No. C 07-03199 JSW (U.S. District Court)
- XII. Discussion and votes regarding closed session action and deliberations. (Discussion and possible action.)
- Discussion and vote pursuant to Brown Act section 54957.1 and Sunshine Ordinance section 67.12 on whether to disclose any action taken or discussions held in closed session regarding existing litigation.
- Motion: The Ethics Commission finds that it is in the best interests of the public (not) to disclose its closed session deliberations re: existing litigation.

XIII. **Items for future meetings.** Commissioners may propose items for future agendas and the Commission may determine the priority of these items. (Discussion.)

XIV. **Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.**

XV. **Adjournment.**

Know Your Rights Under the Sunshine Ordinance

Government's duty is to serve the public, reaching its decision in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review. For more information on your rights under the Sunshine Ordinance or to report a violation of the ordinance, contact Frank Darby by mail to Administrator, Sunshine Ordinance Task Force, 1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco CA 94102-4689; by phone at 415 554 7724; by fax at 415 554 7854; or by email at sotf@sfgov.org. Citizens interested in obtaining a free copy of the Sunshine Ordinance can request a copy from Mr. Darby or by printing Chapter 67 of the San Francisco Administrative Code on the Internet, <http://www.sfgov.org/sunshine/>

The ringing of and use of cell phones, pagers and similar sound-producing electronic devices are prohibited at this meeting. Please be advised that the Chair may order the removal from the meeting room of any person(s) responsible for the ringing or use of a cell phone, pager, or other similar sound-producing devices.

This location is wheelchair accessible. In order to assist the City's efforts to accommodate persons with severe allergies, environmental illnesses, multiple chemical sensitivity, or related disabilities, attendees at public meetings are reminded that other attendees may be sensitive to various chemical-based products. Please help the City accommodate these individuals.

Individuals and entities that influence or attempt to influence local legislative or administrative action may be required by the San Francisco Lobbyist Ordinance [SF Campaign & Governmental Conduct, Code § 2.100] to register and report lobbying activity. For more information about the Lobbyist Ordinance, please contact the Ethics Commission at 25 Van Ness Avenue, Suite 220, San Francisco, CA 94102; telephone (415) 252-3100; fax (415) 252-3112 and web site www.sfgov.org/ethics

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SF Ethics Commission

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October 15, 2007

(Approved November 5, 2007)

Minutes of the Special Meeting of

The San Francisco Ethics Commission

October 15, 2007

Room 408, City Hall

I. Call to order and roll call.

Chairperson Harriman called the meeting to order at 5:32 p.m.

COMMISSION MEMBERS PRESENT: Susan Harriman, Chairperson; Emi Gusukuma, Vice-Chairperson; Jamienne Studley, Commissioner; Eileen Hansen, Commissioner.

Commissioner Charles Ward was excused.

STAFF PRESENT: John St. Croix, Executive Director; Mabel Ng, Deputy Executive Director; Paul Solis, Investigator/Legal Analyst; Shaista Shaikh, Assistant Deputy Executive Director.

OFFICE OF THE CITY ATTORNEY: Jon Givner, Andrew Shen, Deputy City Attorneys.

OTHERS PRESENT: Terry Daniel, Recreation and Park Department; Supervisor Chris Daly, Board of Supervisors; Terry Gross, attorney for John Rinaldi; John Rinaldi; Jeremy Paul; and other unidentified members of the public.

MATERIALS DISTRIBUTED:

- Recreation and Park Department Statement of Incompatible Activities

- Mayor's Office of Economic and Workforce Development Statement of Incompatible Activities

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- Memorandum from Executive Director to Ethics Commission re: Staff Comment on Daly Legislation, October 11, 2007
 - Text of Daly Legislation
 - Memorandum from Executive Director to Ethics Commission re: John Rinaldi's Appeal to the Ethics Commission of the Executive Director's Decision Not to Certify Him as Eligible to Receive Public Financing, October 11, 2007
 - Form SFEC - 142(c)-2: Qualifying Contributions List by Candidates for Mayor
 - Appeal Letters from Terry Gross, attorney for John Rinaldi, September 18, 2007; October 3, 2007; October 9, 2007
 - Letters from Executive Director to John Rinaldi re: Notice of Ineligibility to Receive Public Funds under San Francisco Campaign and Governmental Conduct Code section 1.100 et seq., September 12, 2007; October 1, 2007
 - Ethics Commission Review of John Rinaldi's Form SFEC - 142(c)-2, September 12, 2007
 - Ethics Commission Review of Resubmission of John Rinaldi's Form SFEC - 142(c)-2, October 1, 2007
 - Letter from Executive Director to Terry Gross, attorney for John Rinaldi re: Ineligibility to Receive Public Funds after Resubmission, October 4, 2007
 - Draft Minutes of the September 10, 2007 Regular Meeting of the Ethics Commission
 - Executive Director's Report to the San Francisco Ethics Commission for the Meeting of October 15, 2007
- II. Public comment on matters appearing or not appearing on the agenda that is within the jurisdiction of the Ethics Commission

None.

III. Statements of Incompatible Activities

Statements for Initial Adoption

Department of Recreation and Park

Terry Daniel, on behalf of the Department of Recreation and Park ("RPD"), stated that RPD began drafting the Statement of Incompatible Activities ("SIA") in 2004 and has worked with Ethics staff to finalize a draft.

Commissioner Hansen asked whether or not the Recreation and Park Commission has approved the SIA. Mr. Daniel responded that he was not presently aware whether or not the Commission approved the SIA.

Public Comment:

None.

Motion 07-10-15-1 (Hansen/Studley): Moved, seconded and unanimously passed (4-0) that the Commission initially approve the draft SIA for the Department of Recreation and Park.

Mayor's Office of Economic and Workforce Development Deputy Director Mabel Ng stated that the SIA has some minor diversions from the template language and essentially tracks the language in the Mayor's Office SIA.

Public Comment:

None.

Motion 07-10-15-2 (Studley/Hansen): Moved, seconded and unanimously passed (4-0) that the Commission initially approve the draft SIA for the Mayor's Office of Economic and Workforce Development.

IV. Consideration of proposed legislation introduced by Supervisor Daly to amend the Campaign Finance Reform Ordinance to consolidate the public financing programs for the Mayor and the Board of Supervisors

Supervisor Chris Daly stated that the goal in proposing the legislation was to level the playing field in Supervisor elections and increase current public financing amounts. He stated that if the amount allotted to Mayoral public financing, \$1.3 million, was divided by eleven, then roughly \$120,000 should be available for Supervisor elections. Supervisor Daly also

proposed an additional \$20,000 for general costs of doing business in the City. He stated that these additions will decrease the reliance on private contributions, will ensure that candidates stay below the voluntary spending ceiling, and will encourage people to run for public office. Supervisor Daly stated that he agreed with Ethics staff's recommendations. Commissioner Hansen stated that she supported the legislation. She also asked why the legislation called for a 35% increase of administrative costs. Executive Director St. Croix stated that the increase reflects a common increase to maintain staff review of the public financing program. Commissioner Hansen inquired about fine structures within the proposed legislation. Supervisor Daly responded that his legislation does not specifically address fine structures but would be open to proposals brought by the Commission. Commissioner Hansen stated that the issue was important because the legislation should balance the need for public access to elections with deterrence from fraudulent filings. Commissioner Hansen inquired as to why the legislation did not address the consequences for failing to file a statement regarding the rejection of voluntary spending ceilings. Also, Commissioner Hansen stated that the legislation did not seem to provide the public with greater awareness about, for example, when candidates actually received public financing. In responding to the latter inquiry, Deputy Director Ng stated that the voter information pamphlet currently requires no notice of candidates receiving public financing. In response to Commissioner Hansen's initial concern, Deputy Director Ng responded that the matter could be referred to enforcement. Supervisor Daly stated that he would be open to further notice requirements and penalty provisions as amendments to his legislation. He also stated that he would hope to see the Ethics Commission take the initiative on penalty and enforcement

matters.

Commissioner Hansen also stated that it is unclear whether there was a prerequisite that a candidate accept the voluntary spending limit before receiving public financing. Deputy Director Ng responded that section 1.140.5(a)(i) of the Campaign Finance Reform Ordinance sets forth the spending limit requirement for Mayoral public financing and if the Board of Supervisors and Mayoral public financing were combined via Daly's legislation, then the requirement would apply uniformly. Commissioner Hansen inquired about the legislative rationale behind lifting spending ceilings in the increments listed.

Executive Director St. Croix responded that the increment figures reflect the current feasibility of staff's continued monitoring of the spending.

Commissioner Gusukuma inquired whether the \$2.75 matching rate was sufficient. Supervisor Daly stated that his office came up with an estimate based on the adequacy of current levels and guidance from the Department of Elections Director.

Executive Director St. Croix stated that the figure should be sufficient; however, if supplemental appropriations are necessary, the Commission could request them. Commissioner Gusukuma also stated that the timing in the last thirty days before the election is crucial, and it is important that staff is able to ascertain whether the ceilings should be lifted so funds are distributed to candidates in a timely manner. Executive Director St. Croix responded that staff will do all that it can to ensure that the process is handled appropriately so that funds are received in a timely fashion. Commissioner Gusukuma then noted two typographical changes to the legislation.

Public Comment:

None.

Motion 07-10-15-3 (Hansen/Studley): Moved, seconded and unanimously passed (4-0) that the Commission support the

proposed legislation to consolidate the public financing programs for the Mayor and the Board of Supervisors with staff changes, as amended.

V. Consideration of proposed legislation introduced by Supervisor Daly to amend section 1.161 of the Campaign and Governmental Conduct Code to require persons making independent expenditures to pay for mass mailings that support or oppose candidates for City elective office to file those mailings and itemization of costs with the Ethics Commission. Supervisor Daly stated that currently, there are no filing requirements for committees who make independent expenditure mass mailings. Supervisor Daly stated that the legislation addresses important public policy concerns. Commissioner Studley inquired about the \$500 threshold present in the legislation. Deputy City Attorney Givner stated that the figure reflects a desire to regulate larger expenditures that may lead to corruption rather than smaller, grassroots-based forms of expenditure. Supervisor Daly stated that because state law requires committee formation for expenditures over \$1,000, that figure may be an alternative mark if the Commission rejects the \$500 figure. Deputy City Attorney Givner added that although there is no assurance of a court's interpretation on the matter, state law does recognize \$1,000 as an important legal threshold for committees. Chairperson Harriman asked Supervisor Daly if he had personal knowledge of whether large mass mailing expenditures are made more often from committees rather than individuals. Supervisor Daly responded that there is no way to know for certain where the mass mailings come from; Executive Director St. Croix added that some mass mailings seem professionally crafted. Chairperson Harriman stated her concern was that a court challenge may focus more on the free speech rights of an individual over those of a committee.

Commissioner Studley inquired as to whether the Supervisor considered including ballot measure expenditures in his legislation. Supervisor Daly responded that his legislation was intended to address issues in candidate elections.

Commissioner Gusukuma asked if the Supervisor intended to hold hearings on the legislation to create a record addressing the how the legislation remedies actual issues. Supervisor Daly responded that he did.

Commissioner Hansen stated that she was opposed to increasing the threshold from \$500 to \$1,000 because the contribution limit for individuals is currently \$500. She also stated that she would support increasing the amount to \$1,000 only for committees. Commissioner Hansen then asked for Commission support regarding the \$1,000 for committees only. The Commissioners declined to support the suggestion.

Commissioner Gusukuma stated that she would only support the legislation if, at every mention of a \$500 threshold in the legislation, the figure was changed to \$1,000 for individuals and committees.

Public Comment:

None.

Motion 07-10-15-4 (Hansen/Studley): Moved, seconded and unanimously passed (4-0) that the Commission support the proposed legislation to amend section 1.161 of the Campaign and Governmental Conduct Code to require persons making independent expenditures to pay for mass mailings that support or oppose candidates for City elective office to file those mailings and itemization of costs with the Ethics Commission, as amended, with staff changes, and by increasing monetary threshold levels triggering application of the ordinance from \$500 to \$1,000.

VI. Consideration of proposed legislation introduced by Supervisor Daly to amend the Campaign and Governmental

Conduct Code to add a section to require that persons conducting or paying for telephone persuasion polls to disclose information to call recipients during the telephone calls and to file disclosure statements with the Ethics Commission. Supervisor Daly stated that persuasion or "push" polls are being increasingly used to influence elections. He stated that currently, persuasion polls are not defined and are not adequately regulated. Supervisor Daly also stated that apart from a definition of persuasion poll, the legislation spells out requirements for polling and disclosure to the Ethics Commission. Deputy City Attorney Givner added that Supervisor Daly worked with professional pollsters to further define persuasion polling.

Commissioner Studley asked why the legislation did not apply to ballot measures. Supervisor Daly responded that his legislation intended to address issues in candidate elections based on his own experiences. Commissioner Studley also suggested substituting "understandable" for "and understood" in section 1.160.5(b) of the proposed legislation.

Commissioner Hansen and Chairperson Harriman suggested including ballot measure regulation within agenda item VI's legislation and agenda item V's legislation. Supervisor Daly responded that he would work with the City Attorney's Office to draft new trailing legislation and apply it to ballot measures. Commissioner Hansen also shared her experiences with push polls.

Supervisor Daly clarified that he would strike "and understood" from section 1.160.5(b) of the proposed legislation.

Public Comment:

Anita Mayo stated that the title of the proposed ordinance is misleading because it indicates that the ordinance will only regulate polling containing false statements; yet the language of the ordinance regulates polling even where false statements

are absent. Second, she stated that the ordinance, in some circumstances, would require disclosure even if a poll was not conducted. Third, she stated that one could reasonably interpret the ordinance as an attempt to discourage polling. Commissioner Gusukuma inquired about the rationale behind the \$100 threshold for detailed accounting. Deputy City Attorney Givner stated that the figure mirrors language in the City's electioneering ordinance.

Commissioner Studley noted a typographical error.

Motion 07-10-15-5 (Studley/Gusukuma): Moved, seconded and unanimously passed (4-0) that the Commission support the proposed legislation to amend the Campaign and Governmental Conduct Code to add a section to require that persons conducting or paying for telephone persuasion polls to disclose information to call recipients during the telephone calls and to file disclosure statements with the Ethics Commission, as amended.

VII. Consideration of proposed legislation introduced by Supervisor Daly to amend Article III Chapter 5 of the Campaign and Governmental Conduct Code to prohibit members of boards, commissions and advisory bodies from participating in a meeting when compromised by alcohol or illegal drugs. Supervisor Daly stated that clear minds should be present in representative government. He also stated that the legislation would grant the Ethics Commission prosecutorial power to enforce the ordinance once referrals are made from complainants who have witnessed City officials compromised by alcohol or drugs.

Commissioner Harriman asked if Supervisor Daly had made any referrals himself. Supervisor Daly responded that he would have been required to make referrals in the past had the ordinance been in effect at the time.

Commissioner Studley asked if there was any other legal

recourse for regulating these activities. Deputy City Attorney Givner stated that other than a general duty of loyalty to the City, there are no other clear legal recourses for consumption of alcohol or drugs during meetings. Executive Director St. Croix added that he was not aware of any law directly addressing these issues.

Chairperson Harriman stated that she was not in favor of supporting the legislation, especially concerning enforcement procedures.

Commissioner Gusukuma stated that she had several concerns about the proposed legislation. She stated that, as written, the term "shall" directs mandatory action to be taken by the Commission that it is not currently required to do, e.g., removing discretion vested in the Executive Director to dismiss a complaint at an early stage if there is insufficient evidence. She also stated that the legislation does not seem to address adequately confidentiality issues and seems to elevate certain offenses above all other offenses within the jurisdiction of the Commission. Commissioner Gusukuma stated that the law could have the effect of punishing someone for conduct that may not be an exercise of good judgment but would not rise to the level of official misconduct. She stated that she would not support the legislation as written.

Commissioner Studley stated that she did not believe this legislation to be wise public policy.

Supervisor Daly responded that he interpreted the legislation to allow enforcement staff to have discretion in evaluating the veracity of complaints. He also stated that he believed the legislation addresses a real problem in City government and that the Ethics Commission should now share responsibility for those problems.

VIII. Consideration of appeal of John Rinaldi, candidate for Mayor, for certification to receive public financing from the

Mayoral Election Campaign Fund

Terry Gross, attorney for John Rinaldi, stated that Mr. Rinaldi was appealing the Executive Director's decision to deny his certification to receive public financing. Mr. Gross stated that there are four ways in which Mr. Rinaldi demonstrated compliance with financing requirements and that staff misinterpreted Mr. Rinaldi's public financing application. First, he stated that PayPal contributions have been improperly denied due to a reporting error on Paypal's part. Second, he stated that contributing sole proprietorships should not be categorized as businesses and should be counted as a proper contribution from an individual. Third, Mr. Gross stated that certain cash contributions were improperly rejected for typographical errors. Fourth, he stated that thirteen \$100 cash contributions were actually \$99 and should have been accepted. Mr. Gross stated that because of these reasons, the Commission should allow Mr. Rinaldi to re-submit his application for public financing certification.

Assistant Deputy Executive Director Shaista Shaikh stated that the Executive Director did not come to an erroneous conclusion regarding financing certification. Executive Director St. Croix asked if the new information provided at the meeting may change the outcome of the initial public financing application review. Ms. Shaikh responded that the additional information may affect the initial review of the application because Mr. Rinaldi's additional Paypal information submitted at the Commission meeting was absent from his initial filings. Chairperson Harriman stated that she believed staff should review the additional information provided by Mr. Gross at the meeting to conclude whether Mr. Rinaldi met requirements for certification. Deputy City Attorney Givner stated that the Commission has the authority to instruct the Executive Director to accept a re-submission and that the Executive Director has

the authority to withdraw his initial denial.

Commissioner Gusukuma stated that the argument by Mr. Rinaldi that she believed to be compelling was his additional documentation regarding Paypal contributions. Commissioner Gusukuma stated that, on the issues of sole proprietorships, the Commission has already ruled on that matter in the past. She stated that it is precedent and should be followed. Regarding cash contributions, Commissioner Gusukuma stated that the law is clear and well established. Mr. Gross acknowledged that he understood the Commission's stance on the cash contributions, noting that the law is clear on that issue. Regarding the typographical errors, Commissioner Gusukuma stated that although she was sympathetic to them, she felt that Mr. Rinaldi should focus his re-submission on the Paypal contributions.

Commissioner Hansen stated that she intended her motion to grant re-submission to reflect Commissioner Gusukuma's discussion.

Public Comment:

Jeremy Paul stated what he believed to be the goal of the public financing program.

Motion 07-10-15-7 (Hansen/Studley): Moved, seconded and unanimously passed (4-0) that the Commission allow John Rinaldi to make one re-submission of his application for public financing with focus on Paypal contributions by October 29, 2007, with direction to staff to respond to John Rinaldi's re-submission by November 6, 2007.

IX. Minutes of the Commission meeting of September 10, 2007
Due to a conflicting time commitment, Chairperson Harriman was excused at about 8:00 p.m.

Commissioner Hansen stated that within Agenda Item III, her intent was to standardize the use, or absence of, a hyphen when discussing "non-profits," not to request uniform

application of a hyphen.

Commissioner Gusukuma suggested inserting "in response to Ms. Ballard's assertion that each of the agencies specified in the proposed legislation were adjudicatory" into Agenda Item IV, paragraph 3.

Commissioner Studley noted a typographical error within Agenda Item IV, paragraph 1.

Public Comment:

None.

Motion 07-10-15-8 (Studley/Hansen): Moved, seconded and unanimously passed (3-0) that the Commission adopt the minutes of the meeting of September 10, 2007, as amended if appropriate.

X. Executive Director's Report

Executive Director St. Croix stated that consideration of some draft SIAs may be conducted in November as opposed to December. He also stated, in response to Commissioner Hansen's request, that he would take under advisement the follow-up on public comment.

Mr. St. Croix stated, in response to Commissioner Hansen's request, that he is also considering Statements of Economic Interests spot checks.

Mr. St. Croix introduced new members to the Ethics Commission enforcement staff, Garrett Chatfield and Catherine Argumedo.

XI. Closed session

Motion 07-10-15-9 (Hansen/Studley): Moved, seconded and unanimously passed (3-0) that the Commission go into closed session to receive legal counsel.

The Commission went into closed session at 8:14 p.m. Present at the closed session were Vice-Chairperson Gusukuma, Commissioner Studley, Commissioner Hansen, Executive Director St. Croix, Deputy Director Ng, Investigator/Legal

Analyst Solis, Deputy City Attorneys Givner and Shen.

XII. Discussion and votes regarding closed session action and deliberations

At 8:34 p.m. the Commission returned to open session.

Motion 07-10-15-10 (Hansen/Studley): Moved, seconded and unanimously passed (3-0) that the Commission not disclose its deliberations during the closed session.

XIII. Items for future meetings

None.

XIV. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission

None.

XV. Adjournment

Public Comment:

None.

Motion 07-10-15-11 (Studley/Hansen): Moved, seconded and unanimously passed (3-0) that the Commission adjourn.

The meeting was adjourned at 8:36.

Respectfully submitted,

Paul Solis

Investigator/ Legal Analyst



ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

INTERESTED PERSONS ADVISORY

SUSAN J. HARRIMAN
CHAIRPERSON

EMI GUSUKUMA
VICE-CHAIRPERSON

EILEEN HANSEN
COMMISSIONER

JAMIEENNE S. STUDLEY
COMMISSIONER

CHARLES L. WARD
COMMISSIONER

JOHN ST. CROIX
EXECUTIVE DIRECTOR

Ethics Commission to Hold Preliminary Hearing on the Matter of the Suspension of Supervisor Edmund Jew

October 12, 2007 – The Ethics Commission plans to hold a preliminary hearing next Friday, October 19, 2007, in connection with the written charges of official misconduct pending against Edmund Jew, Member, San Francisco Board of Supervisors, District 4.

Under the Charter, if an official is suspended from office, the Ethics Commission is required to hold a hearing on that suspension and then to make a recommendation to the Board of Supervisors on whether such suspension should be made permanent. At the preliminary hearing, the Ethics Commission will discuss procedural and scheduling issues for the hearing required under the Charter.

The preliminary hearing is currently scheduled for Friday, October 19, 2007 at:

1:30 p.m.
Room 416
City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA

An agenda will be published and posted at least 72 hours prior to the meeting.

General Contact:
John St. Croix
Executive Director
San Francisco Ethics Commission
(415) 252-3100

Media Technical Contact:
Rohan Lane
Media/Security Systems Manager
City Hall Building Management
(415) 554-7485

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**SAN FRANCISCO ETHICS COMMISSION
NOTICE OF SPECIAL MEETING
October 19, 2007 1:30 P.M.**

**and AGENDA
Room 416 City Hall**

1 Dr. Carlton B. Goodlett Place, San Francisco

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I. Call to order and roll call.

II. The Ethics Commission will confer on procedural issues regarding charges pending against Supervisor Edmund Jew. Under Charter Section 15.105, when the Mayor suspends an elective officer, "The Ethics Commission shall hold a hearing not less than five days after the filing of written charges. After the hearing, the Ethics Commission shall transmit the full record of the hearing to the Board of Supervisors with a recommendation as to whether the charges should be sustained." In order to prepare to discharge this obligation, the Ethics Commission will hold a hearing on this date to establish the process, parameters and protocol for the hearing required under the Charter. The Ethics Commissioners will provide an opportunity for the representative(s) of the Mayor and the representative(s) of Supervisor Jew to identify their concerns regarding procedure and scheduling. There will be opportunity for public comment on this item. (Discussion and possible action.)

III. Adjournment.

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The ringing of and use of cell phones, pagers and similar sound-producing electronic devices are prohibited at this meeting. Please be advised that the Chair may order the removal from the meeting room of any person(s) responsible for the ringing or use of a cell phone, pager, or other similar sound-producing devices.

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SF Ethics Commission

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October 19, 2007

(Approved December 10, 2007)

Minutes of the Special Meeting of
The San Francisco Ethics Commission
October 19, 2007

Room 408, City Hall

I. Call to order and roll call

Chairperson Harriman called the meeting to order at 1:30 p.m.

COMMISSION MEMBERS PRESENT: Susan Harriman,
Chairperson; Emi Gusukuma, Vice-Chairperson; Charles Ward,
Commissioner; Jamienne Studley, Commissioner; Eileen
Hansen, Commissioner.

STAFF PRESENT: John St. Croix, Executive Director; Mabel Ng,
Deputy Executive Director; Paul Solis, Investigator/Legal
Analyst; Steven Massey, Information Technology Officer.

OFFICE OF THE CITY ATTORNEY: Linda Ross, Therese Stewart,
Deputy City Attorneys.

OTHERS PRESENT: Steven Gruel, attorney for Edmund Jew;
Melinda Haag, attorney for the Ethics Commission.

MATERIALS DISTRIBUTED:

- Meeting Agenda

II. The Ethics Commission will confer on procedural issues
regarding charges pending against Supervisor Edmund Jew.
The Ethics Commissioners will provide an opportunity for the
representative(s) of the Mayor and the representative(s) of
Supervisor Jew to identify their concerns regarding procedure

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and scheduling

Chairperson Harriman stated that the purpose of the hearing was only to resolve procedural issues relevant to an actual hearing on the merits of the Mayor's official misconduct charges against Edmund Jew.

Chairperson Harriman stated that the Commission will rely only on the evidence before it. She stated that she believed the Commission should first consider briefing from both parties, discussing the applicable law and facts. She stated that evidence should be in the form of declarations and affidavits from witnesses. She also stated that live testimony is not warranted unless successfully argued for by the parties, setting forth the reasons why live testimony is appropriate.

Chairperson Harriman stated that because the Commission is an administrative body, hearsay declarations will be accepted but may affect the weight of the evidence. She stated that documentary evidence should be authenticated and that formal discovery processes are not warranted. Chairperson Harriman stated that a separate Superior Court matter is pending and should be distinct from the administrative proceeding.

Chairperson Harriman stated that she believed that the Mayor's Office carries the burden of proof in the administrative matter. She stated that initial briefing should discuss the appropriate burden of proof to apply, where that burden lies, and definitions of legal standards such as "official misconduct" and "residence." She stated that the Commission should have both parties' views on whether the civil court discovery should take place before any administrative process commences.

Chairperson Harriman stated that she is interested in discussing time frames for the parties' submissions and that page limits should be in effect.

Commissioner Gusukuma stated that she agreed with Chairperson Harriman's view on processes. She stated that she

does not believe the Charter envisions a formal trial to adjudicate this matter. Commissioner Gusukuma stated that the Commission will discharge its duties to ensure all due process rights for both parties are respected.

Linda Ross, attorney for Mayor Newsom, stated that she believes discovery is necessary in the administrative action and should be combined with the Superior Court action. She stated that because the state Attorney General has authorized a quo warranto action against Mr. Jew, the City Attorney will proceed very soon in Superior Court with discovery in that action. She stated that depositions and other evidence will soon be available to the Ethics Commission based on that discovery process.

Ms. Ross stated that she envisions a two-step process whereby the Mayor's Office will first conduct discovery in Superior Court and then take its findings to the Ethics Commission. She stated that she supports initial briefing discussing applicable law and facts. Ms. Ross stated that the briefing should include stipulations on authenticity of documents due to the business-like nature of the documents.

Chairperson Harriman asked if Ms. Ross intended to stay the administrative matter until completion of the Superior Court action. Ms. Ross responded that she was not requesting a stay, but did believe that the Commission should take advantage of the Superior Court discovery process so that two discoveries need not occur. Chairperson Harriman agreed that two discoveries were not necessary.

Ms. Ross also stated that she will address the issue of what party bears the burden of proof in her briefing to the Commission.

Steven Gruel, attorney for Edmund Jew, stated that Mr. Jew does not waive any procedural rights or objections by his appearance at the hearing. Mr. Gruel stated that he does not

agree that discovery should be combined with the Superior Court action due to a separation of powers issue. He stated that because the legislative and executive bodies of City government established the Ethics Commission, the Commission should not combine its processes with a judicial arm of government. Mr. Gruel stated that he will brief the issue.

Mr. Gruel stated that the Commission does have subpoena power under the Charter and does not need to take its evidence solely from a merger with the Superior Court discovery. Chairperson Harriman stated that the subpoena issue should be briefed in addition to why a specific witness would be necessary.

Chairperson Harriman stated that the question is not one of merging the two discovery matters, but one of conducting the Superior Court discovery first. Mr. Gruel responded that he did not believe that the Commission should wait; discovery processes in the administrative manner could be conducted separately and simultaneously.

Mr. Gruel stated that he believed the matter required live testimony and that all witnesses should be cross-examined. He also stated that the Mayor's Office should bear the burden of proof and that the burden should be a standard of clear and convincing evidence.

Mr. Gruel stated that he will also bring motions to dismiss based on several items. First, he stated that there are issues of ambiguity in the official misconduct charges brought by the Mayor, specifically regarding a discussion of federal charges against Mr. Jew. Mr. Gruel stated that within the Attorney General's grant of quo warranto, the Attorney General also discussed federal charges and that these issues muddle an understanding of the basis of the official misconduct charges concerning residency.

Second, Mr. Gruel noted that statements made by members of the Board of Supervisors about Mr. Jew could unfairly influence the Board's consideration of the matter. He stated that he may propose that a representative of District Four sit on the Ethics Commission panel in order to ensure fairness to Mr. Jew.

Third, Mr. Gruel stated that the Attorney General's grant of quo warranto discusses ambiguities in the City Charter section regarding residency and does not lay out a specific procedure for handling issues with residency. He stated that he interprets the Attorney General's opinion as advocating an adoption of state law to implement procedures concerning residency. Mr. Gruel felt that the quo warranto action did that and would not call for a separate official misconduct action.

Ms. Ross stated that Mr. Gruel's motions to dismiss should be reviewed first before briefing on other issues. Chairperson Harriman and Mr. Gruel agreed. Commissioner Hansen asked the parties to expedite their briefing as much as possible. Chairperson Harriman, with agreement from both attorneys, then set dates for initial briefing and reply. The first briefing, of no more than 20 pages, from Mr. Gruel will be filed by November 2, 2007 with an opposition brief, of no more than 20 pages, filed by Ms. Ross by November 16, 2007. Mr. Gruel will then file his reply brief, of no more than 10 pages, by November 26, 2007.

Public Comment:

Thomas Picarello stated that he did not understand why the Ethics Commission is continuing its review of the official misconduct charges when the City Attorney's quo warranto action accomplishes the same task. He also stated that the Commission should stay its proceedings until the state and federal cases involving Mr. Jew have been resolved.

Chairperson Harriman introduced Melinda Haag of Orrick, Herrington, & Sutcliffe as Ethics Commission counsel.

Francisco Da Costa stated that the publicity involved in this case impedes the ability of the Commission to provide a fair hearing to Mr. Jew. He also stated that he did not believe Mr. Jew should be judged by the Mayor as committing official misconduct when Mr. Jew is elected by constituents of his district.

Sonia Ng stated that, as a resident of District Four, she supported Mr. Jew. She also stated that the Mayor's bad actions should be addressed to the same degree as Mr. Jew's potentially bad actions.

Espanola Jackson stated that, as a resident of District Ten, she has worked with Mr. Jew on a number of occasions in Bayview Hunter's Point. She stated that Mr. Jew is one of a few members of government who supports Bayview Hunter's Point and stated that she hoped the Commission would adjudicate only on the evidence before it.

Douglas Yep stated that Mr. Jew should be provided with the presumption of innocence. He stated that members of the Board of Supervisors have made statements that could unfairly prejudice their consideration of Mr. Jew's case. He also stated that members of the Board of Supervisors interpret the role of the Ethics Commission differently and that issue should be explored.

Chairperson Harriman stated that because the Commission sits as an adjudicatory body, the press should refrain from obtaining statements from any Commissioner.

Motion 07-10-19-1 (Harriman/Gusukuma) Moved, seconded and unanimously passed (5-0) that the Commission adopt a briefing schedule addressing jurisdictional issues and a motion to strike in the matter of official misconduct charges pending against Supervisor Edmund Jew; the first briefing, of no more than 20 pages, from Edmund Jew will be filed by November 2, 2007 with an opposition brief, of no more than 20 pages, filed

by the Mayor's Office by November 16, 2007, followed by Edmund Jew's reply brief, of no more than 10 pages, by November 26, 2007.

III. Adjournment

Motion 07-10-19-2 (Gusukuma/Studley): Moved, seconded and unanimously passed (5-0) that the Commission adjourn.

The meeting was adjourned at 2:33 p.m.

Respectfully submitted,

Paul Solis

Investigator/ Legal Analyst

Ethics Commission



25 Van Ness Ave., Suite 220
San Francisco, CA 94102
Phone 252-3100 Fax 252-3112

**SAN FRANCISCO ETHICS COMMISSION
NOTICE OF SPECIAL MEETING**

November 5, 2007 5:30 P.M.

and AGENDA

Room 408 City Hall

1 Dr. Carlton B. Goodlett Place, San Francisco

(Due to the November 12, 2007 holiday, this meeting will occur on a date different from the Ethics Commission's regular meetings.)

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cial
- I. Call to order and roll call.
 - II. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.
 - III. Statements of Incompatible Activities. The Commission has been considering the draft Statements of Incompatible Activities ("SIAs") submitted by departments, boards and commissions pursuant to section 3.218 of the Campaign and Governmental Conduct Code. At this meeting, the Commission will consider for final adoption several SIAs which were previously initially approved and for which the meet and confer process has been concluded. These SIAs pertain to the following departments, boards or commissions: City and County Employees' Retirement System; General Services Administration; Department of Public Works; Department of Telecommunications and Information Services; Entertainment Commission; Office of the Assessor-Recorder; Treasurer and Tax Collector; Civil Service Commission; Asian Art Museum; War Memorial and Performing Arts Center; Juvenile Probation Commission and Department; Adult Probation Department; Police Commission and Police Department; Office of Citizen Complaints; Department of Emergency Management; Children and Families Commission; Department of Human Services and Human Services Commission; Department of Aging and Adult Services and Commission on Aging; City and County Health Service Board and Health Service System; Taxi Commission; Residential Rent and Stabilization Board; Office of the District Attorney; Office of the Public Defender; and City Attorney's Office. Representatives of departments under consideration may attend to make comment on SIAs and possibly answer questions from Commissioners. SIAs that are given final adoption will not go into effect until thirty days after all SIAs have been finally adopted. The draft SIAs for these departments, boards and commissions are available at the Commission office and on the Commission website. (Discussion and possible action.)

- IV. Consideration of proposed legislation introduced by Supervisor Daly to amend the Campaign Finance Reform Ordinance to consolidate the public financing programs for the Mayor and the Board of Supervisors. At the Commission's October 15, 2007 hearing, the Commission approved, by a 4-0 vote, Supervisor Daly's draft legislation with amendments. At subsequent hearings, the Rules Committee separately approved two versions of the proposed legislation that will require further consideration by the Commission. The first version of the bill contains substantive modifications to the administrative costs provisions. It was further amended by the Rules Committee on October 25 to open a 30-day window in which a candidate could retract a statement of non-participation and file a statement of participation (section 1.142), and to raise reporting thresholds (section 1.152). For discussion purposes, this is version "A." The second version, "B," contains amendments proposed by Commissioner Hansen, and was approved by the Rules Committee on November 1. Version "B" also contains the modifications to the administrative costs provisions. The Commission will consider both versions of the bill at this meeting. The Board of Supervisors is expected to act on the version, if any, adopted by the Ethics Commission. (Discussion and possible action.)
- V. Consideration of proposed changes to the template for Statements of Incompatible Activities. As part of the meet-and-confer process and as a result of ongoing discussions with City departments, boards and commissions, staff is recommending additional changes to the template previously adopted by the Commission. Staff's proposed changes will be discussed and possibly adopted at this meeting. A staff memo will be available in advance at the Commission office and on the Commission website. (Discussion and possible action.)
- VI. Consideration of proposed amendment to Campaign and Governmental Conduct Code section 3.1-102 to authorize the Ethics Commission to require electronic filing of Statements of Economic Interests ("SEIs"). A staff report and draft language for the proposed legislation will be available in advance at the Commission office and on the Commission website. (Discussion and possible action.)
- VII. Consideration of proposed change to Ethics Commission Regulation 1.107-2 to permit the Commission to provide training to candidates and treasurers on the Commission website via a presentation that may be in the form of a video, slideshow or any other medium that effectively conveys substantially the same information provided in the workshop. A staff report and draft language for the Regulation change will be available in advance at the Commission office and on the Commission website. (Discussion and possible action.)
- VIII. Minutes of the Commission meeting of October 15, 2007. (Discussion and possible action.)
- IX. Executive Director's Report. An update of important Ethics Commission staff activities since the previous monthly meeting. (Discussion.)
- X. Items for future meetings. Commissioners may propose items for future agendas and the Commission may determine the priority of these items. (Discussion.)

- XI. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.
- XII. Adjournment.

Know Your Rights Under the Sunshine Ordinance

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SF Ethics Commission

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November 5, 2007

(Approved December 10, 2007)

Minutes of the Special Meeting of
The San Francisco Ethics Commission
November 5, 2007

Room 408, City Hall

I. Call to order and roll call.

Chairperson Harriman called the meeting to order at 5:35 p.m.

COMMISSION MEMBERS PRESENT: Susan Harriman,
Chairperson; Emi Gusukuma, Vice-Chairperson; Jamienne
Studley, Commissioner; Eileen Hansen, Commissioner;
Commissioner Charles Ward, Commissioner.

STAFF PRESENT: John St. Croix, Executive Director; Mabel Ng,
Deputy Executive Director; Paul Solis, Investigator/Legal
Analyst; Garrett Chatfield, Investigator/Legal Analyst, Catherine
Argumendo, Investigator/Legal Analyst.

OFFICE OF THE CITY ATTORNEY: Jon Givner, Andrew Shen,
Deputy City Attorneys.

OTHERS PRESENT: Terry Gross, attorney for John Rinaldi; Marc
Solomon; Dr. Oshervich; Robin Coomer; and other unidentified
members of the public.

MATERIALS DISTRIBUTED:

- Agenda for the San Francisco Ethics Commission Special Meeting - November 5, 2007
- Memorandum from Executive Director re: Final Approval of Draft Statements of Incompatible Activities

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- San Francisco City and County Employees' Retirement System Statement of Incompatible Activities
- General Services Agency Statement of Incompatible Activities
- Department of Public Works Statement of Incompatible Activities
- Department of Telecommunications and Information Services Statement of Incompatible Activities
- Entertainment Commission Statement of Incompatible Activities
- San Francisco Office of the Assessor-Recorder Statement of Incompatible Activities
- Office of the Treasurer and Tax Collector Statement of Incompatible Activities
- Civil Services Commission Statement of Incompatible Activities
- Asian Art Museum of San Francisco Statement of Incompatible Activities
- San Francisco War Memorial and Performing Arts Center Statement of Incompatible Activities
- San Francisco Juvenile Probation Commission and Department Statement of Incompatible Activities
- San Francisco Adult Probation Department Statement of Incompatible Activities
- San Francisco Police Commission and Police Department Statement of Incompatible Activities
- Office of Citizen Complaints Statement of Incompatible Activities
- Department of Emergency Management Statement of Incompatible Activities
- Children and Families Commission Statement of Incompatible Activities
- Department of Human Services and Human Services Commission Statement of Incompatible Activities

- Department of Aging and Adult Services and Commission on Aging Statement of Incompatible Activities
- San Francisco City and County Health Services Board and Health Service System Statement of Incompatible Activities
- San Francisco Taxi Commission Statement of Incompatible Activities
- Residential Rent Stabilization Board Statement of Incompatible Activities
- City and County of San Francisco Office of the District Attorney Statement of Incompatible Activities
- Office of the San Francisco Public Defender Statement of Incompatible Activities
- San Francisco City Attorney's Office Statement of Incompatible Activities
- Outline of specific differences between proposal "A" and proposal "B" of the proposed legislation to amend the Campaign Finance Reform Ordinance to consolidate the public financing programs for the Mayor and the Board of Supervisors.
- Proposal "A" of the proposed legislation to amend the Campaign Finance Reform Ordinance to consolidate the public financing programs for the Mayor and the Board of Supervisors.
- Proposal "B" of the proposed legislation to amend the Campaign Finance Reform Ordinance to consolidate the public financing programs for the Mayor and the Board of Supervisors.
- Memorandum from Executive Director re: Proposed Changes to CFRO Amendments regarding Public Financing
- Memorandum from Executive Director re: Additional Proposed Changes to SIA Template
- Memorandum from Executive Director re: Amendment to Conflict of Interest Law to Provide for Electronic Filing of Statements of Economic Interests
- Memorandum from Executive Director re: Proposed Change to Regulation regarding online presentations

- Draft Minutes of the October 15, 2007 Regular Meeting of the Ethics Commission
- Executive Director's Report to the San Francisco Ethics Commission for the Meeting of November 5, 2007
- Notice of San Francisco Ethics Commission Interested Persons Meeting to Discuss Fines Procedures and Processes

II. Public comment on matters appearing or not appearing on the agenda that is within the jurisdiction of the Ethics Commission

Terry Gross, attorney for John Rinaldi, stated his belief that the October 15, 2007 minutes were inaccurate. He stated that the Commission did not limit the scope of Mr. Rinaldi's submission. Marc Solomon commented that the minutes from the October meeting contradicts the motion made during the meeting. He suggested that the Commission make the minutes available as soon as possible whenever there is a time-sensitive issue. He also commented on public financing for supervisorial races and made a suggestion to expand the program.

Dr. L. Oshervich stated that he worked with Mr. Rinaldi and made comments regarding Rinaldi's application for public funding and ensuing appeals. He asked the Commissioners to examine the appeal carefully.

Robin Coomer is a cash contributor to Mr. Rinaldi's campaign and expressed her frustration. She asked that declarations be noted by the Commission.

III. Statements of Incompatible Activities

Statements for Final Adoption

Deputy Director Ng stated that the memorandum which was distributed outlines the changes made to each draft Statement of Incompatible Activities ("SIA").

City and County Employees' Retirement System

Commissioner Hansen noted a typographical error which states "to prior to" under the example on the fourth line in section

III.A.1.a. She suggested deletion of the first "to."

General Services Administration

After consideration of the draft SIA, the Commission accepted staff's proposal.

Department of Public Works

After consideration of the draft SIA, the Commission accepted staff's proposal.

Department of Telecommunications and Information Services

After consideration of the draft SIA, the Commission accepted staff's proposal.

Entertainment Commission

After consideration of the draft SIA, the Commission accepted staff's proposal.

Office of the Assessor-Recorder

After consideration of the draft SIA, the Commission accepted staff's proposal.

Motion 07-11-05-1 (Hansen/Ward): Moved, seconded and unanimously passed (5-0) that the Commission finally approve the draft SIAs for the City and County Employees' Retirement System, General Services Administration, Department of Public Works, Department of Telecommunications and Information Services, Entertainment Commission, and Office of the Assessor-Recorder, as amended.

Public Comment:

None.

Treasurer and Tax Collector

Commissioner Hansen noted a grammatical error on third line from the bottom in section III.B.1.c and she suggested "providing information" be struck. Deputy Director Ng suggested that it refers to different things. Chairperson Harriman suggested that the sentence be drafted in a different manner so that there is no confusion. Commission Hansen agreed that staff can resolve the issue.

Commissioner Gusukuma had a question regarding section III.A.1.b., defining "personal contract" of an officer/employee who is a party or has an ownership interest of at least 10%. She wanted clarification whether it means 10% of a party or 10% of a contract. Deputy Director Ng stated that it means 10% of a party, so if an officer/employee had at least 10% interest in that entity then the officer/employee would be precluded from having a personal contract. Deputy Director Ng stated that staff will amend the sentence for clarification. Chairperson Harriman suggested "ownership interest of at least 10% in an entity that is a party to the contract" and Commissioner Gusukuma agreed to the wording of that change.

Civil Service Commission
Commissioner Hansen reiterated her suggestions regarding "providing information" in section III.A.3.b. Deputy Director Ng stated that the staff will make the change.

Asian Art Museum

After consideration of the draft SIA, the Commission accepted staff's proposal.

War Memorial and Performing Arts Center

After consideration of the draft SIA, the Commission accepted staff's proposal.

Juvenile Probation Commission and Department

Chairperson Harriman stated that she does not feel comfortable defining what conduct is appropriate between consenting adults in section III.A.1.a, even if an advance written determination is obtainable.

Deputy Director Ng stated she would raise the issue with the department. Commissioner Gusukuma asked whether the officer/employee would be barred from reviewing the case/file. Deputy Director Ng said she believed so, but will investigate the topic further with the department. Executive Director St. Croix

suggested removing this SIA from consideration pending further review.

Commissioner Ward commented that there are existing rules restricting relationships between consenting adults, giving the example of a restricted relationship between consenting adults where one is a supervisor of the other. Chairperson Harriman asked what possible examples could be where a relationship would not necessarily affect the work at the juvenile probation department. Commissioner Ward stated that he thought the important issue is whether or not the officer/employee would be involved in the file. He gave a suggestion and Chairperson Harriman agreed to it. Chairperson Harriman instructed the staff to change this SIA.

Adult Probation Department

Commissioner Hansen stated that she will discuss some proposed grammatical changes directly with staff.

Deputy City Attorney Givner stated that the final clause in section III.B.1.c. had a similar problem with wording and he suggested a change to mirror the one mentioned earlier. The Commission agreed to this change.

Motion 07-11-05-2 (Hansen/Studley): Moved, seconded and unanimously passed (5-0) that the Commission finally approve the draft SIAs for the Treasurer and Tax Collector, Civil Service Commission, Asian Art Museum, War Memorial and Performing Arts Center, and Adult Probation Department, as amended.

Public Comment:

None.

Police Commission and Police Department

After consideration of the draft SIA, the Commission accepted staff's proposal.

Office of Citizen Complaints

Commissioner Gusukuma inquired into the process in section III.C.3, regarding when investigators are supposed to provide notice regarding outside employment. She also referenced the staff memo and asked for clarification. Deputy City Attorney Givner explained that employees employed as investigators are prohibited from engaging in certain employment. He stated that it is actually a prohibition, not just notice. Commissioner Gusukuma then asked whether it is twofold: prohibition and requirement for notice. Deputy City Attorney Givner responded in the affirmative.

Commissioner Hansen stated that she believed that the language regarding outside employment in this SIA differed from the language regarding outside employment in other SIAs. She inquired as to why there was a difference. Deputy City Attorney Givner explained that all outside employment is not prohibited by the department. He continued by saying that this section of the SIA for this department differs because of the nature of the OCC; they ask that all employees at least provide notice that they are engaged in outside employment.

Department of Emergency Management

After consideration of the draft SIA, the Commission accepted staff's proposal.

Children and Families Commission

After consideration of the draft SIA, the Commission accepted staff's proposal.

Department of Human Services and Human Services Commission

After consideration of the draft SIA, the Commission accepted staff's proposal.

Department on Aging and Adult Services and Commission on Aging

After consideration of the draft SIA, the Commission accepted

staff's proposal.

Motion 07-11-05-3 (Hansen/Studley): Moved, seconded and unanimously passed (5-0) that the Commission finally approve the draft SIAs for the Police Commission and Police Department, Office of Citizen Complaints, Department of Emergency Management, Children and Families Commission, Department of Human Services and Human Services Commission, and Department on Aging and Adult Services and Commission on Aging, as amended.

Public Comment:

None.

City and County Health Service Board and Health Service System

After consideration of the draft SIA, the Commission accepted staff's proposal.

Taxi Commission

After consideration of the draft SIA, the Commission accepted staff's proposal.

Residential Rent and Stabilization Board

Commissioner Hansen asked about the deletion of "or officer" in the staff memorandum. Deputy Director Ng stated the language was removed because some members of the Rent Board must be tenants or landlords.

Office of the District Attorney

After consideration of the draft SIA, the Commission accepted staff's proposal.

Office of Public Defender

After consideration of the draft SIA, the Commission accepted staff's proposal.

City Attorney's Office

After consideration of the draft SIA, the Commission accepted staff's proposal.

Motion 07-11-05-4 (Hansen/Studley): Moved, seconded and

unanimously passed (5-0) that the Commission finally approve the draft SIAs for City and County Health Service Board and Health Service System, Taxi Commission, Residential Rent and Stabilization Board, Office of the District Attorney, Office of Public Defender, and City Attorney's Office, as amended.

Public Comment:

None.

Commissioner Hansen asked whether the officers of the Southeast Community Facility Commission ("SECFC") are included in the PUC's SIA. Deputy Director Ng said they are not. Deputy Director Ng stated that it is not necessary because the SECFC is an advisory body and the members are not subject to SIA regulation. Deputy Director Ng continued by saying that only the Executive Director is required to file a Statement of Economic Interests and the Executive Director will be covered as a PUC employee in the PUC's SIA.

IV. Consideration of proposed legislation introduced by Supervisor Daly to amend the Campaign Finance Reform Ordinance to consolidate the public financing programs for the Mayor and the Board of Supervisors.

Executive Director St. Croix stated that the staff will ask the Commission to consider version A of the proposed legislation rather than version B. He commented that staff identified eight differences between the two proposals, mainly regarding press releases. He asked the Commission to leave it to the staff to determine when it is appropriate to issue releases during the public finance program. Deputy Director Ng discussed three suggested changes to Proposal A and referred to a memorandum describing the three changes.

Chairperson Harriman stated that the Commission should understand that when Commissioners request proposed legislation from Supervisors, they should do so as individual citizens, not as Commissioners. She stated that any

Commissioner is free to discuss matters with any member of the Board of Supervisors, but if that occurs, the Commissioner does not speak on behalf of the entire Commission and does so as a member of the public. Commissioner Hansen stated that she believed Supervisor Daly understood that in creating version B, with Commissioner Hansen's input, Commissioner Hansen spoke as a Commissioner, not on behalf of the entire Commission.

Commissioner Hansen asked whether Supervisor Daly would be able to move forward with this change to the Campaign Finance Reform Ordinance ("CFRO") and suggested changes to the proposal could be made in the future.

Commissioner Hansen supported proposal B since proposal A did not have enough notice requirements.

Chairperson Harriman supported proposal A with staff's suggested changes. Commissioner Gusukuma asked whether Supervisor Daly would be able to go forward the next day if either version is adopted during the meeting. Executive Director St. Croix responded in the affirmative. Commissioner Gusukuma believed the Commission issued press releases at many times already and did not believe language for issuing more press releases needed to be in the law.

Commissioner Hansen made a motion to support version B with one non-substantive change. There was no second.

Motion 07-11-05-5 (Harriman/Gusukuma): Moved, seconded and passed (4-1; Hansen dissenting) that the Commission support the proposed legislation (version A) with staff changes, as amended.

Public Comment:

None.

V. Consideration of proposed changes to the template for Statements of Incompatible Activities

Deputy Director Ng referred to six proposed changes to the SIA

template in a staff memorandum. She stated that most changes referred to the advance written determination process and provided further clarification on that issue.

Commissioner Gusukuma stated she was concerned about allowing exemptions from activity that is otherwise expressly prohibited by the SIA. She asked to hear examples of when this would occur. Deputy Director Ng said she did not have any specific examples, but that the intent is to allow for situations where an exemption could be given if circumstances warrant.

She stated that the change would allow for an exemption without subjecting the officer/employee to any criminal, administrative, or civil penalties. Commissioner Ward also asked to hear examples where advance written determination would be permitted and someone would be exempt from otherwise prohibited activity. Deputy City Attorney Givner provided an example of practicing law in New York for a charitable purpose where he would otherwise be prohibited from doing so according to the City Attorney's Office's SIA.

Chairperson Harriman stated her concerns about being overbroad, where people would be prohibited from doing things that are otherwise acceptable. She suggested rewriting the template and if that is not possible, the Commission should allow the supervisor to be able to make the determination whether the officer/employee's activity is acceptable.

Commissioner Studley asked whether the advance written determinations would be available as public records. Deputy Director Ng stated that the determinations are public records to the extent provided by law.

Chairperson Harriman asked whether there is a review set for how often advanced written determinations are requested.

Executive Director St. Croix suggested adding a reporting requirement. Chairperson Harriman supported monitoring SIAs and stated that she would like to discuss a monitoring

recommendation before the SIAs become effective.

Commissioner Studley suggested that the Commission inform the public regarding SIAs. Commissioner Gusukuma stated that she would like to see the exemption letters and requests. Chairperson Harriman suggested that staff return with a monitoring proposal. Commissioner Hansen stated that the Commission should review the requests for the first few years. She also agreed with Commissioner Studley that this issue is newsworthy. Commissioner Ward asked whether the Commission has ongoing authority to regulate or amend these SIAs. Executive Director St. Croix stated that the Ethics Commission may amend the SIAs. Chairperson Harriman asked when the last SIA will be presented. Deputy Director Ng indicated the last SIA may be presented for initial approval in January.

Commissioner Hansen stated that the "proposed change" language in section III.C.3 was unclear and confusing. She added that she would prefer using the word "determined" in some fashion. Commissioner Gusukuma suggested the following wording: "will be determined not to violate..."

Motion 07-11-05-6 (Hansen/Studley): Moved, seconded and unanimously passed (5-0) that the Commission adopt staff's changes to the SIA template, as amended.

Public Comment:

None.

VI. Consideration of proposed amendment to Campaign and Governmental Conduct Code section 3.1-102 to authorize the Ethics Commission to require electronic filing of Statements of Economic Interests ("SEIs").

Deputy Director Ng referred to a memo explaining why the staff supported this amendment. At this time, there is no authorization for the Ethics Commission to require electronic filings of the Statements of Economic Interests ("SEI").

Chairperson Harriman stated requiring individuals to file only electronically would be burdensome to many who are not technologically savvy. She stated that staff should allow electronic filing but not require it. Commissioner Hansen disagreed and stated her support for the staff regarding this amendment.

Commissioner Gusukuma asked whether this technology currently exists and whether it is possible to implement it soon. She also asked if there would be a searchable database.

Deputy Director Ng stated that forms for elected officials should be searchable, but individuals who are not required to file with the Commission may not have searchable SEIs. Commission Ward asked whether any of these forms are not public records and Deputy Director Ng replied that they are all public records.

Chairperson Harriman asked if 60-70% filing electronically would be more beneficial than the having no one file electronically. Deputy Director Ng responded by saying that some electronic filing would be better than no electronic filing. Commissioner Hansen stated that implementing a fully electronic system would increase transparency of government. Deputy City Attorney Givner suggested changing the wording of "shall" to "may" in the proposed regulation. Commissioner Hansen suggested keeping the word "shall" and, because it is new, not fining people if they do not comply for the first year. Commissioner Ward added that some people may feel so burdened that they would not file anything at all.

Commissioner Hansen suggested that perhaps people could contact the Commission staff and ask about how to complete the form electronically.

Executive Director St. Croix recommended changing "shall" to "may" and move towards "shall" eventually.

Motion 07-11-05-7 (Gusukuma/Ward): Moved, seconded and passed (4-1; Hansen dissenting) that the Commission adopt

staff's proposal for the new section 3.1-102.1, with the word "may" in place of "shall" in the second line of sub-section A.

Public Comment:

Benjamin Wachs stated that it is onerous task to come to the Ethics Commission office to look through paper filings and he urged adoption of this amendment. He stated his belief that the electronic filing requirement would enable comparative analysis.

Commissioner Studley noted that the amendment would allow for electronic filing as well as paper filing. Deputy Director Ng explained that state law currently requires paper filing, so someone filing electronically would still be required to file a paper copy with the Commission. Executive Director St. Croix stated that the electronic system will automatically generate a paper copy of the electronic form, so that the form only needs to be completed once.

Commissioner Studley suggested reconsideration in the future to determine when "may" may become "shall."

VII. Consideration of proposed change to Ethics Commission Regulation 1.107-2 to permit the Commission to provide training to candidates and treasurers on the Commission website via a presentation that may be in the form of a video, slideshow or any other medium that effectively conveys substantially the same information provided in the workshop. Deputy Director Ng referred to a staff memorandum regarding the change to the regulation. She suggested changing the regulation to broaden the media availability of a training presentation, as opposed to just a video.

Commission Hansen asked how the Commission would be able to determine whether someone actually viewed the on-line training presentation. Deputy Director Ng gave an example where the Commission would be able to implement a test where the person viewing the presentation would be required to

answer questions in order to move through the presentation. Commissioner Hansen stated she would support this regulation when she knows more details about cost and accountability. Deputy Director Ng said staff is presenting this to the Commission because the staff needs the Commission's approval in order to explore all the possibilities fully. She said staff has been compiling information and should be able to provide that information at the December meeting. Commissioner Hansen asked if the Commission can wait to discuss this topic until the December meeting. Deputy Director Ng explained it would be better to have the proposed change approved at this time, as it would not be effective until 60 days from approval and there are three elections in 2008. Commissioner Gusukuma voiced a concern regarding the complexity of the presentations and whether the presentation would be clear in a video.

Motion 07-11-05-8 (Studley/Gusukuma): Moved, seconded and passed (4-1; Hansen dissenting) that the Commission accept the proposed change to the regulation for online presentations recommended by the staff.

Public Comment:

None.

VIII. Minutes of the Commission meeting of October 15, 2007 Investigator/Legal Analyst Paul Solis referred to changes made to the minutes in Agenda Item Four. He stated that some of Commissioner Gusukuma's comments have been expanded. Commissioner Hansen asked whether there were any changes made in reference to item VIII. Mr. Solis responded that there were no changes to item VIII. Commissioner Hansen referred to information provided by Mr. Gross, stating that the minutes were inaccurate and that they did not reflect the accuracy of the transcript. Executive Director St. Croix stated that he does not have an official transcript of that meeting and that normally staff does not transcribe sections unless upon Commissioners'

request. Commissioner Hansen then suggested that the audiotapes be reviewed and compared to the transcript provided today by Mr. Gross. Commissioner Hansen stated she would like an accurate description of Item VIII.

Mr. Solis stated that he had reviewed that section multiple times and found nothing that would lead him to believe that the minutes were inaccurate in any way. Commissioner Hansen suggested that Mr. Gross' video of the October meeting be compared to the Commission's audiotape. Executive Director St. Croix stated that if staff were to do a review of a record of the prior meeting, it would be from the Commission's own records. Chairperson Harriman clarified that the Commission has its own transcript and staff has already reviewed this specific section several times. She then asked Commissioner Gusukuma whether she believes the minutes reflected her comments accurately.

Commissioner Gusukuma began by stating that she does not remember saying the word "only," and that she only remembered what she intended to say. She remembered wanting to be clear that sole proprietorship issue was a non-starter and the issue about the \$100 contributions was well settled by state law.

Commissioner Studley asked if the language of the passed motion controls rather Commissioners' individual discussions leading up to the motion. Chairperson Harriman stated that the motion's language should control. Commissioner Studley then stated that if the minutes were accurate in characterizing the motion, then the motion was not exclusive to PayPal contributions. Chairperson Harriman asked that Mr. Solis check for the word "only."

Commissioner Hansen expressed concerned about the last sentence of Commissioner Gusukuma's comments. She stated that her comments following Commissioner Gusukuma's

comments should have included the contributions with typographical errors as well as PayPal contributions and believed it is an important point. Commissioner Hansen requested that staff check the sentence again and suggested that staff can perhaps look at the video from Mr. Gross. Commissioner Studley stated that the dilemma lies in the fact that the word "focus" has multiple meanings. Chairperson Harriman then asked the Executive Director whether the staff focused exclusively on PayPal or whether staff reviewed all submitted information. Executive Director St. Croix stated that the staff reviewed the entire submission. He stated that they first reviewed any new information, particularly the PayPal contributions. He stated that they then reviewed the other issues and reconsidered them, but ultimately came to the same conclusions.

Motion 07-11-05-9 (Studley/Ward): Moved, seconded and unanimously passed (5-0) that the Commission adopt the minutes of the meeting of October 15, 2007 as amended, with direction to staff to prepare a transcript of the relevant portion of Item VIII in the October 15, 2007 minutes.

Public Comment:

Terry Gross suggested that staff not just review the tape but prepare a transcript of the minutes. He respectfully requested that the motion be amended to request a formal transcript of this portion of the October hearing.

Commissioner Studley added an amendment to her motion, requesting that staff prepare a transcript of the relevant section. Chairperson Harriman said a transcript may be prepared, but that staff should only rely on the Commission's record of the meeting.

Attorney Gross asked when, if at all, he will receive documents from Executive Director St. Croix before the November 30, 2007 appeal hearing, and whether he will have a chance to

respond to the documents. Chairperson Harriman advised him to talk directly to staff.

IX. Executive Director's Report

Executive Director St. Croix stated that elements for a training program for SIAs are in place and staff is performing review at this time. He also stated that Supervisor Jew's hearing is scheduled for November 30, 2007 and the Rinaldi appeal will be added onto the agenda for that day. He stated that staff will conduct an Interested Persons Meeting on November 8, 2007 discussing the Commission's fines, procedures, and processes. He stated that Commissioners Gusukuma and Studley have indicated they will attend.

Commissioner Hansen asked a question regarding item 3 on page 2 - global forfeiture assessment. She asked why 2004 and 2005 remain pending and why 2006 has been completed, but is now also pending. Executive Director St. Croix stated that enforcement of the forfeiture is unlikely for those cycles (2004, 2005, 2006). He stated there is no need for the global assessment if the Commission has no plans to enforce them. Commissioner Hansen expressed her concern that global assessment may not occur, especially since the assessment for 2004 was a hot press item.

Commissioner Hansen asked about follow-up to cases referred to the San Francisco Bureau of Delinquent Revenues ("BDR"). Executive Director St. Croix stated that the Commission cannot direct BDR, but is permitted to make inquiries.

Commissioner Hansen also asked about Mr. Rinaldi's November 30th appeal and how the decision was made allowing an appeal. Executive Director St. Croix explained that the Commission rejected Rinaldi's appeal for public financing on Friday and Rinaldi filed a new appeal and the Commission decided to give Rinaldi another chance to present his case. The Commission decided to include his case on November 30, since

the window for submissions of public financing claims closes on December 8. Commissioner Hansen asked whether any details regarding the November 30 meeting were available.

Chairperson Harriman and Executive Director St. Croix stated there are none at this time.

X. Items for future meetings

Commissioner Gusukuma stated that she would like a discussion on appeal issues with regards to public financing. She also stated that she would like to discuss whether the Commission would permit multiple appeals and the timing of those appeals.

Commissioner Hansen stated she would like the Commission to make an announcement at the beginning of each meeting regarding the amount of time permitted for public comment.

Commissioner Studley agreed. She also stated that she would like to follow up on the global forfeiture discussion and discuss the dialogue between Sunshine Ordinance Task Force and Ethics Commission, regarding their contention that the Commission is not releasing requested documents.

Commissioner Gusukuma stated that she also would like to resolve that issue between the Sunshine Ordinance Task Force and the Commission.

XI. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission

None.

XII. Adjournment

Public Comment:

None.

Motion 07-10-15-1 (Gusukuma/Hansen): Moved, seconded and unanimously passed (5-0) that the Commission adjourn.

The meeting was adjourned at 8:03 P.M.

Respectfully submitted,

Catherine Argumedo
Investigator/ Legal Analyst



Ethics Commission



25 Van Ness Ave., Suite 220
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Phone 252-3100 Fax 252-3112

**SAN FRANCISCO ETHICS COMMISSION
NOTICE OF SPECIAL MEETING**

November 30, 2007 1:30 P.M.

and AGENDA

Room 408 City Hall

1 Dr. Carlton B. Goodlett Place, San Francisco

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I. Call to order and roll call.

II. The Ethics Commission will confer on issues relating to In the Matter of Charges Against Edmund Jew, Member, San Francisco Board of Supervisors, District Four. Under Charter Section 15.105, when the Mayor suspends an elective officer, "The Ethics Commission shall hold a hearing not less than five days after the filing of written charges. After the hearing, the Ethics Commission shall transmit the full record of the hearing to the Board of Supervisors with a recommendation as to whether the charges should be sustained." Supervisor Jew has submitted a motion to dismiss written charges of misconduct, terminate proceedings and alternatively to strike; the Mayor has submitted an opposition brief. At this hearing, Commissioners will consider the briefs submitted by both parties and make a determination on the motion. If the Ethics Commission does not dismiss the written charges of misconduct or terminate the proceeding, the Commission may discuss and provide further direction on the process, parameters and protocol for the hearing required under the Charter. The Ethics Commissioners will provide an opportunity for the representative(s) of the Mayor and the representative(s) of Supervisor Jew to identify their concerns regarding procedure and scheduling. There will be opportunity for public comment on this item. (Discussion and possible action.)

III. There will be one ten-minute recess between the two agenda action items.

IV. Consideration of appeal of John Rinaldi, candidate for Mayor, for certification to receive public financing from the Mayoral Election Campaign Fund. At its October 15, 2007 meeting, the Commission heard an appeal from Mr. Rinaldi on the Executive Director's final determination not to certify Mr. Rinaldi as eligible to receive public funds because documents submitted by Mr. Rinaldi did not indicate that he had received the requisite \$25,000 in qualifying contributions from at least 250 contributors by the 70th day before the election. After direction from the Commission that Mr. Rinaldi be given another opportunity to provide additional information, and after reviewing the additional information, the Executive Director has again made a final determination that Mr. Rinaldi is ineligible to receive public

funds because he was not able to demonstrate that he received the requisite \$25,000 in qualifying contributions from at least 250 contributors by the 70th day before the election. Under section 1.142 of the Campaign Finance Reform Ordinance, Mr. Rinaldi may appeal the Executive Director's decision to the Ethics Commission. There will be an opportunity for public comment on this item. (Discussion and possible action.)

V. Adjournment.

Know Your Rights Under the Sunshine Ordinance

Government's duty is to serve the public, reaching its decision in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review. For more information on your rights under the Sunshine Ordinance or to report a violation of the ordinance, contact Frank Darby by mail to Administrator, Sunshine Ordinance Task Force, 1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco CA 94102-4689; by phone at 415 554 7724; by fax at 415 554 7854; or by email at solff@sfgov.org. Citizens interested in obtaining a free copy of the Sunshine Ordinance can request a copy from Mr. Darby or by printing Chapter 67 of the San Francisco Administrative Code on the Internet, <http://www.sfgov.org/sunshine/>. The ringing of and use of cell phones, pagers and similar sound-producing electronic devices are prohibited at this meeting. Please be advised that the Chair may order the removal from the meeting room of any person(s) responsible for the ringing or use of a cell phone, pager, or other similar sound-producing devices.

This location is wheelchair accessible. In order to assist the City's efforts to accommodate persons with severe allergies, environmental illnesses, multiple chemical sensitivity, or related disabilities, attendees at public meetings are reminded that other attendees may be sensitive to various chemical-based products. Please help the City accommodate these individuals. Individuals and entities that influence or attempt to influence local legislative or administrative action may be required by the San Francisco Lobbyist Ordinance [SF Campaign & Governmental Conduct. Code § 2.100] to register and report lobbying activity. For more information about the Lobbyist Ordinance, please contact the Ethics Commission at 25 Van Ness Avenue, Suite 220, San Francisco, CA 94102; telephone (415) 252-3100; fax (415) 252-3112 and web site www.sfgov.org/ethics

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November 30, 2007

Minutes of the Special Meeting of
The San Francisco Ethics Commission
November 30, 2007

Room 408, City Hall

I. Call to order and roll call

Chairperson Harriman called the meeting to order at 1:32 p.m.

COMMISSION MEMBERS PRESENT: Susan Harriman,
Chairperson; Emi Gusukuma, Vice-Chairperson; Charles Ward,
Commissioner; Jamieenne Studley, Commissioner; Eileen
Hansen, Commissioner.

STAFF PRESENT: John St. Croix, Executive Director; Mabel Ng,
Deputy Executive Director; Shaista Shaikh, Assistant Deputy
Executive Director; Paul Solis, Investigator/Legal Analyst;
Menaka Mahajan, Campaign Finance Auditor.

OFFICE OF THE CITY ATTORNEY: Linda Ross, Deputy City
Attorney, attended the meeting during consideration of items I
and II. Jon Givner, Deputy City Attorney, attended the meeting
during consideration of items IV and V.

OTHERS PRESENT: Steven Gruel, Boyd Power, attorneys for
Edmund Jew; Melinda Haag, attorney for the Ethics
Commission; Terry Gross, attorney for John Rinaldi; Dr. John
Wu, Walter Ko, Francisco DaCosta, Sonia Ng, Myrna Lim, Mei
Woo, Patricia O'Gaffney, Shaosua Gao, Rose Tsai, Sam Kwong,
Espanola Jackson, Christopher Mohammed, Rita Goldberger,
Douglas Yep, Willie Radcliffe, Calvin Louie, Alfonso King, Brian

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O'Flynn, Barbara Maskunas, Yuk Fung, Charlie Marsteller, John Rinaldi; and other unidentified members of the public.

MATERIALS DISTRIBUTED

- Meeting Agenda

- John Rinaldi's October 29 Resubmission of Application for Public Funds

- John Rinaldi's Appeal to the Ethics Commission of the Executive Director's Decision Not to Certify Him as Eligible to Receive Public Financing

II. The Ethics Commission will confer on issues relating to In the Matter of Charges Against Edmund Jew, Member, San Francisco Board of Supervisors, District Four.

Chairperson Harriman stated that the Commissioners read the briefs regarding Supervisor Jew's motion to strike, she limited argument for each side to 20 minutes with five minutes for rebuttal.

Steven Gruel stated that Attorney General Brown's decision permitted quo warranto action by the City Attorney on the issue of residency. The City Attorney in this instance, however, has labeled it as official misconduct instead of quo warranto for these removal proceedings.

Mr. Gruel stated that the City Charter has no definition of residency, which was the finding by Attorney General Brown. He added that the Brown opinion found that state law should supersede on the issue of residency, and that the only way to deal with it is exclusively by quo warranto. Mr. Gruel further stated that residency is not included within the definition of misconduct anywhere in the City Charter. Thus, Mr. Gruel said that the framers of the Charter kept residency separate from official misconduct, which does not involve questions of residency.

Mr. Gruel stated that forum shopping is an issue in this case, and that the City Attorney is electing to bring this matter before

two different bodies with different results and standards of proof.

Chairperson Harriman asked Mr. Gruel, if the Mayor had not initiated quo warranto proceedings, and only this proceeding was pending, wouldn't Supervisor Jew have had the right to initiate a quo warranto proceeding himself once the Mayor had appointed a replacement supervisor.

Mr. Gruel responded that Supervisor Jew does have that right. Chairperson Harriman asked Mr. Gruel about an appellate court decision, in which a city council removed a clerk, thus implying that administrative hearings can proceed at the same time as a quo warranto proceeding.

Mr. Gruel stated that under the San Francisco Charter, there is no definition of residency, and that the application of the Charter is arbitrary and unfair because at the same time as the charges against Supervisor Jew were filed, it came to light that Supervisor Dufty had moved out his district and was allowed to do so even though the Charter says a supervisor "shall" reside in his or her district. He stated that the City Attorney is deciding unilaterally how the Charter is applied.

Mr. Gruel stated that the Commission should not allow the matter to proceed because its job is to make a recommendation to the Board of Supervisors, several of whose members have already violated Supervisor Jew's due process rights.

Mr. Gruel showed a photo of the Mayor and members of the Board of Supervisors at the ceremony welcoming Supervisor Jew's replacement. He stated that he was shocked that this occurred, and that it showed a lot more than just support for a new colleague. He stated that if the Board of Supervisors didn't have a role in the removal process, there would be no problem, but this was beyond harmless error.

Mr. Gruel added that the Board of Supervisors cannot be impartial.

Mr. Gruel showed a picture of statements from Supervisors McGoldrick, Peskin, and Ammiano, which imply Supervisor Jew's guilt well before any charges were brought. He stated that such remarks by a juror would get that juror off the jury. Mr. Gruel stated that Supervisor Peskin had said Supervisor Jew was a flight risk even though Supervisor Jew had received authorization to take a trip to China.

Linda Ross stated that Supervisor Jew's attorneys have gotten ahead of themselves. She said that the Commission is required to hold a hearing and make a recommendation to Board. She stated that the Commission has no authority to dismiss, or to terminate, or to disqualify. She stated that the role of Commission is that of a hearing officer making findings.

Ms. Ross stated that the Charter does not divest the Commission of its duty and authority over official misconduct. She stated that Supervisor Jew is arguing that the only way he can be removed is by quo warranto. Further, she stated that this would mean the Mayor is powerless to suspend or bring charges against a supervisor.

Ms. Ross stated that Supervisor Jew also incorrectly argues that there is no misconduct by violating the residency requirement. She stated that under both state law and the Charter, there is a five-year ban on seeking re-election for official misconduct. She stated that state law gives a Charter city plenary authority over the appointment and removal of its officials.

Ms. Ross stated that the definition of official misconduct is extremely broad, and that the residency section is very broad as well. She stated that official misconduct is any wrongful behavior in relation to the duties of office, or any failure to perform any duty enjoined by law. Ms. Ross stated that the residency violation is a violation like any other form of misconduct and a failure to perform a duty enjoined by law. Ms. Ross stated that there are issues of fairness, and that

Supervisor Jew would have to show actual bias by the Commission and Board. She stated that as for the Commission, there is no actual bias, and as for the Board, welcoming a new colleague to the Board is not actual bias, and Board member statements are not bias. Also, she stated that Supervisor Jew's claim that there is bias because the City Attorney represents both the Mayor and the Commission is unfounded.

Ms. Ross stated, in summary, that the Commission's work is yet to come by making a recommendation to the Board of Supervisors to determine whether Supervisor Jew has engaged in official misconduct.

Mr. Gruel responded that there is no definition of a hearing within the context of the Commission. He stated that as for bias, Ms. Ross has the law wrong, and that the standard is not actual bias, it is a reasonable probability of bias which can be inferred by one's actions.

Chairperson Harriman asked Mr. Gruel if he agrees with the Quinterro case, which said that the standard is actual bias. Mr. Gruel said the facts of that case are different. He stated in that case the City Attorney was trying to remove an officer. He stated that the City Attorney prosecuting the case had been an advisor to the board making the decision to remove the officer, and that case said that it was the contact over time that created the actual bias.

Chairperson Harriman stated that Mr. Gruel's statement is contrary to the holding of the case, which clearly allowed the City Attorney to play two roles as long as there is a separation. In that case it was the same City Attorney; here, Ms. Ross does not advise the Commission and the City Attorney did not, and does not, advise the Commission on this case at all.

Mr. Gruel stated that the City Attorney is claiming that everything going on regarding Supervisor Jew is occurring in a vacuum. He added that each Commission member has been

appointed by a member of the Board of Supervisors or the Mayor.

Commissioner Studley stated that the appointment structure for Commissioners is outlined in the Charter, and that the Commission was created with that structure at the same time that its jurisdiction over misconduct was established. She stated that Mr. Gruel's argument might not be relevant now as a policy.

Mr. Gruel stated that all of the actions together amount to a political issue, and that when the Charter was framed, this situation was never contemplated.

Motion 07-11-30-1 (Gusukuma/Studley): Moved, seconded and passed (5-0) that the Ethics Commission make the following findings and decisions: 1) the Ethics Commission has the authority to hear Supervisor Jew's pending motion to dismiss, terminate proceedings, and, alternatively, to strike; 2) Supervisor Jew's arguments to dismiss in favor of the quo warranto proceedings are unfounded; 3) the Ethics Commission does not have authority to dismiss this proceeding on the grounds that the process established by the City Charter for suspension and removal violates Supervisor Jew's due process rights; in any event, Supervisor Jew's claim that this proceeding violates his due process rights is unfounded because he has failed to prove: A) an unacceptable probability of actual bias on the part of any member of the Ethics Commission, or B) that any individual from the City Attorney's office has had an inappropriate dual role as an advisor to, and an advocate for, this Commission; 4) the Commission's finding regarding the due process arguments is made without prejudice to Supervisor Jew's right to raise them again in a different forum; Supervisor Jew's request that certain members of the Board of Supervisors disqualify themselves is properly directed to that body; 5) the motion to strike is denied; however, the Commission will not

consider in this proceeding any allegations in the written charges of official misconduct pertaining to the criminal complaint filed by the federal authorities.

Public Comment:

Dr. John Wu stated that he has lived in the Sunset area for 25 years, and that Supervisor Jew is already facing other charges and this proceeding wastes resources. He also stated that the residency violation has occurred with many other politicians, who were only given a slap on the wrist, and that Supervisor Jew has saved the City a lot of money.

Walter Ko stated that Supervisor Jew has participated in American democracy and it is not fair for the Mayor to dismiss an elected official based on allegations. Also, he stated that the state should handle this matter and that the Ethics Commission is going after only Chinese politicians.

Francisco DaCosta stated that the City Charter has many gray areas and that the Ethics Commission has never handled a matter like this before. Further, he stated that the Mayor and City Attorney should be ashamed of themselves because the City has political forces that are racist and the law is deficient.

Sonia Ng stated that she has lived in District Four for 30 years. She stated that the pictures presented remind her of a communist system. She asked where are Supervisor Jew's civil rights, and the rights of the residents of District Four.

Myrna Lim stated that she came to say that the City is embarking on a dangerous position in the democratic process. She stated the Ethics Commission will find Jew guilty of official misconduct because the Ethics Commission does not have a choice under the current political climate. She stated that under the definition of misconduct, the Mayor can accuse anyone of misconduct.

Mei Woo stated that she has been a resident of District Four for 40 years. She stated that a person is innocent until proven

guilty. She stated there can only be one standard, and Supervisor Jew should be allowed to defend himself in a court of law.

Patricia O'Gaffney stated that she is concerned about a double standard. She stated that it is wrong to have the Ethics Commission decide about Supervisor Jew. She stated that in Supervisor Jew's house on 28th Avenue, his wife was victim of cancer, and that his wife had to leave so her family could take care of her. Also, she said that Supervisor Jew has had long roots in San Francisco.

Shaosua Gao stated that our political system is not any different from systems that the US government criticizes, and this matter is one that should be left to state courts.

Rose Tsai stated that this matter is political. She stated that criminal courts will deal with this and city resources do not need to be spent on this. She stated that the City has a deficit of \$229 million, and the Commission should not be pursuing this matter, and that the City needs to define residency first.

Sam Kwong stated that the Commission should stop wasting taxpayers' money. He stated that the Commissioners are not bound to political bodies, but they must see if persons are treated fairly under the law. He stated that the Commission should let criminal courts deal with this.

Espanola Jackson stated that she is a resident of District Ten and that Supervisor Jew supports her district. She said that the politics in this City bother her and the fact that the Commission made a motion before hearing public comments shows this is all political.

Christopher Mohammed stated that he is acquainted with Supervisor Jew as a friend of the Bayview/Hunters Point community. He stated that Supervisor Jew was the one of the few who voted against developing Bayview. Further, he stated that this matter is for the courts to decide, and that this is a

witch-hunt and very unethical people are charging Supervisor Jew.

Rita Goldberger discussed Milton Marks, and stated that Kamala Harris did not pursue Marks. She stated that this action is purely political, and she equated this situation with the McCarthy era. She stated that she disagrees with Jew's politics but thinks that this is wrong, and that this is about Supervisor Jew being a thorn in the Mayor's side.

Douglas Yep stated that two supervisors have recently faced recall efforts, neither one was Supervisor Jew. Two current board members had rumors about whether they live in their district without any investigation. Supervisor Jew's removal has stopped an investigation into allegations involving a major City department. His absence has hurt Chinese employees at a major City unit.

Willie Radcliffe stated that he is a District 10 resident, and that Supervisor Jew voted against privatization in Bayview. He said that Supervisor Jew should be back on the Board.

Calvin Louie stated that he was present to speak about Supervisor Jew's due process rights. He stated that there are three cases regarding these residency issues and that Supervisor Jew should have the right to defend himself systematically.

Alfonso King stated that the Commission should let its moral compass be its guide. He stated that he is concerned that some Supervisors' comments sound like lynching talk. He also stated that he does not want to see the Ethics Commission involved in a political lynching.

Brian O'Flynn stated that he was not at the meeting to speak for or against Supervisor Jew. He stated that Jew was elected and should not be removed based on allegations. Further he stated that all politicians are biased to some degree. He also stated that the Bayview ballot measures were blocked by the

same politicians seeking Jew's removal. He stated that the City has a long history of racism, and the courts should do their job and keep politics out of this.

Barbara Maskunas stated that she used to work for Supervisor Jew and the Board of Supervisors comments are just the tip of iceberg. She stated that the Board of Supervisors has already made up their mind, thus whatever the Ethics Commission decides is irrelevant. She stated that the Board of Supervisors resented Supervisor Jew and they were biased against Jew from his first day in office. She stated that she has never seen this kind of disparate treatment before in San Francisco politics, and that members of the Board of Supervisors have done the same thing or worse.

Yuk Fung stated that removal is not in best interest of District Four. Supervisor Jew is one of best supervisors she has ever known.

Commissioner Ward stated that he is the District Attorney's appointee to the Ethics Commission, he is not paid, he is not able to make political contributions, and he does not belong to any political action committee or political club, yet Mr. Gruel alleged in his papers that the Ethics Commission was biased. He asked Mr. Gruel to explain the basis of the charge that Commissioner Ward is biased, and to explain what Commissioner Ward's personal political interest is in the outcome of the case.

Mr. Gruel stated that he holds everyone on the Ethics Commission in high regard, but the Ethics Commission appointments are at the behest of people who have filed charges against Supervisor Jew. He assured the Commissioners that this is not a personal attack, and that this has created a situation in which the appropriate thing to do is to allow the state courts to decide. He stated that it is the framework of how the Commissioners were appointed that

makes it inappropriate.

Commissioner Ward stated that he has not made any statement either public or private regarding his opinion on this case; he is not running for any office. He asked Mr. Gruel again what Commissioner Ward's personal or financial interest could be in this case, or his alleged bias.

Mr. Gruel stated that the papers addressed the framework. He further stated that this matter does not end with the Ethics Commission, and that the matter will go to the Board of Supervisors, which is his concern. He stated that the Ethics Commission doesn't have the authority to make the final determination.

Commissioner Hansen stated that the Commission will use its moral compass to make its decision. She followed up on Commissioner Ward's comments that the Commissioners all are required to speak and act in an unbiased manner. She stated that the Commissioners are clear that they are appointed by elected officials, and that the Commissioners work hard not to be biased or political. She stated that there is no political bias inherent in her decision, and that a decision has not been made prior to this discussion. She assured that her decision will not be carrying out anyone's will but her own. She further stated that she is grateful that members of other communities have come forward to support a member of the Chinese community, and is sorry that residents of District Four feel that their representation has been harmed. She stated that the Commission's decision is not based on anything about race or otherwise; it is based on its duty under the Charter to hold a hearing and make a recommendation.

Commissioner Studley stated that she takes the Commission's responsibilities seriously, and acts completely independently. She stated that the only pressure she feels is to act appropriately and carry out the Ethics Commission's

responsibilities. She confirmed that the reason the Ethics Commission is appointed by different people was to be a way to ensure the greatest independence possible of the Commission. She stated that the Ethics Commission has judicial authority, and that this is not an informal cluster or rogue proceeding. She stated that the people of the City and County of San Francisco wanted this body, and the Ethics Commission's responsibility is only to the people of the City, and not the people who appointed the individual commissioners. She stated that the Commissioners will look with an open mind at the underlying issues they have to decide. She further addressed the motion stating that she wanted to ensure that timing is not captured within motion; that it should be a separate consideration.

Chairperson Harriman agreed that the timing is a separate consideration.

Commissioner Gusukuma stated that she was not appointed by Phil Ting, and she stated that she wanted to be clear that no argument has been made that section 15.104, the suspension and removal provision, is completely invalid; the argument is just that the residency provision is invalid.

Mr. Gruel answered affirmatively, that it is only residency that is at issue.

Commissioner Gusukuma stated that Mr. Gruel's argument is that the Ethics Commission is allowed to hear charges of misconduct of elected officials, so long as it is not on the issue of residency.

Mr. Gruel stated that Commissioner Gusukuma's understanding of his position is correct.

Chairperson Harriman addressed the next steps for these proceedings. She asked Mr. Gruel and Ms. Ross if the proceedings should be stayed pending the outcome of the quo warranto proceeding.

Mr. Gruel stated that he would have to speak with Supervisor Jew before he could answer that question.

Ms. Ross also stated that she would have to consult with her client first on that issue. Ms. Ross then proposed that the parties get together and work out an agreement as to how to go forward, which may include a stay. She stated that any plan would include the use of discovery in the Superior Court action. She stated that the information is mostly documents, and there is no reason to duplicate them in this proceeding. She also stated that she would like to see if the parties can agree on the burden of proof, the definition of official misconduct, residency, and willfulness. She continued that she would like to try to work out to what extent they could proceed by declaration or stipulation, and the use and weight of hearsay, whether live testimony is required, and also, what would be the form of findings and recommendations by the Ethics Commission.

Mr. Gruel stated that he is willing to speak with Ms. Ross to see what common ground exists, if any. He stated that the parties could come back in early January to give the Ethics Commission a status update.

Chairperson Harriman stated that she wants to see some of these issues resolved, and does not want to come back in January and be exactly where they are now. She agreed that it is a good idea to meet and talk about common ground on issues. She wanted the issue of who has, and what is, the burden of proof resolved; and also wanted a briefing schedule if there is no agreement on those issues. She stated that the briefing can be simultaneous with simultaneous replies. She stated that on the evidentiary issues, the Commission can only make a decision on the evidence presented to it; and until the parties submit briefs containing declarations and stipulations, the Commission cannot decide about whether live testimony is needed.

Chairperson Harriman continued that there is no reason why the parties should not exchange documents.

Mr. Gruel stated that there are criminal charges against Supervisor Jew and that gives him a right to not discuss anything about his residency under the Fifth Amendment.

Chairperson Harriman said the Ethics Commission does not want to trample on Supervisor Jew's rights.

Ms. Ross stated that she understood the Commission was asking only about documentary evidence.

Chairperson Harriman stated the Ms. Ross was correct and that they only needed to exchange documents that they would be submitting to the Ethics Commission. She stated that if the parties are not going to submit any documents, there would be nothing to exchange.

Ms. Ross stated that she envisioned a deadline on any outstanding issues after the parties have met, and have those briefs before the Ethics Commission to resolve the outstanding issues.

Chairperson Harriman said that she does not want to have a meeting merely to set a briefing schedule.

Mr. Gruel stated that live testimony is necessary because cross examination is necessary to determine the facts.

Chairperson Harriman repeated, once the briefing on the merits is done, the parties can then assert what witnesses need to be presented live.

Ms. Ross stated that her understanding is that the parties will meet and confer, and try to determine the legal issues to be briefed, the burden of proof, and who has it. She continued that she understood the Ethics Commission to be asking for separate briefing on the merits, to include the issues of the definition of official misconduct, willfulness, and residency. Commissioner Gusukuma asked the Chair if briefing will be necessary if the parties stipulate to a stay.

Chairperson Harriman answered that if there is a stipulation to a stay, the Ethics Commission will have to vote on it.

Commissioner Gusukuma suggested that any stay agreement be submitted as a stipulation and an order.

Mr. Gruel and Ms. Ross agreed to meet in December, with briefs due January 8, 2008 and the replies due on January 15, 2008. The Commissioners tentatively agreed to a January 18, 2008 meeting.

Chairperson Harriman stated that she wants to continue to have the Supervisor Jew meetings as separate, special meetings. Motion 07-10-19-2 (Harriman/Gusukuma) Moved, seconded and passed (5-0) that the parties meet and confer about the issues of whether or not a stay is appropriate, the burden of proof, who has it and what it is, and any other issues they deem relevant; that if the parties agree on a stay, they will inform the Ethics Commission by stipulation, at which time the Ethics Commission will set a meeting. If the parties do not agree to a stay, they will file briefs on the burden of proof issues and any other issues agreed upon as issues by the parties; filing simultaneous briefs on January 8, 2008, and simultaneous replies on January 15, 2008. The Ethics Commission will aim to hold the next meeting on January 18, 2008.

No public comment.

III. There was a ten-minute recess between the two agenda action items.

IV. Consideration of appeal of John Rinaldi, candidate for Mayor, for certification to receive public financing from the Mayoral Election Campaign Fund.

Terry Gross stated that he does not understand the differing amounts identified by staff on the memo, and he focused first on the \$99 cash contributions because he said that there are enough of them to make up the difference. He explained these

were the contributions rejected by staff because of the cross-outs on the form. Mr. Gross stated that the Executive Director said that the new affidavits could not be accepted as proof that the contributions were actually \$100 contributions. Mr. Gross stated that the affidavits are proof that the cross-out was to show a \$99 cash contribution and not a \$100 contribution, and at the time the cross-outs were written down, the campaign had learned that \$100 was not acceptable so it merely crossed out the \$100 written down to reflect that it actually only did receive \$99. He stated that the cross-out is evidence that there was nothing to hide, and he asked the Ethics Commission to look at his letter dated November 26, with attached declarations of contributors who all stated they only gave \$99.

Mr. Gross stated that the Executive Director also said in his letter that there are inconsistencies from the campaign which indicated that the campaign had changed its position. Mr. Gross stated that he initially had looked through the Executive Director's spreadsheet and because Mr. Gross had already responded to that, he did not look at the underlying documents. Mr. Gross stated that he only recently looked at the underlying records to see if they were cross-outs. Commissioner Studley asked Mr. Gross how many contributions included cross-outs. Mr. Gross responded by stating that he thought it was 12, and at least greater than 9. Commissioner Ward asked if the donations occurred at an event, because the donor cards have no date on them. Mr. Gross responded that it was at several events. Commissioner Ward asked why the donors just did not fill out new cards. Mr. Gross responded that he didn't think it would have mattered, and sometimes a new card was submitted. He said that he thought this showed how truthful the committee was in its reporting.

Chairperson Harriman asked about the date they all had to be in and noted that some forms are dated in September, when they had to be submitted in August. She asked Mr. Gross how the Ethics Commission can allow people to change forms after the due date. She stated that it starts a never-ending problem in the future policing of campaigns.

Mr. Gross stated that the forms were not a wholesale change. The forms were actually submitted as \$99, with the \$100 crossed out.

Commissioner Studley stated that it seemed as if two different questions were emerging. The first was what is the standard for whether the \$99 contribution should count, and what was the standard staff used to determine if it should count as a qualifying contribution. The second question is which side of that standard did the contribution at issue fall.

Shaista Shaikh stated that staff has worked very hard to give credit to the committee for all qualifying contributions. She stated that Mr. Rinaldi was in contact with staff and was informed of the documentation required for public financing, including the rule that \$100 cash contributions are not acceptable.

Chairperson Harriman stated that this involves public funds and that the Commission has to be extremely diligent in how it handles taxpayer money. She stated that the rules are strict and they have to be. Whatever the Ethics Commission decides today will be applied in the future. She confirmed that the Ethics Commission will not apply one set of rules today, and then another set of rules for someone else. She stated that the rules need to be strict and that everyone knows what the rules are and that they are fair. She asked Ms. Shaikh to address what standards and rules staff applied as staff looked at Mr. Rinaldi's submissions.

Ms. Shaikh stated that staff looked at all of the contributions in

great detail and when a contribution is made by personal check, staff checks whether the preprinted address on the check is a San Francisco residential address. If it is, staff will take that as evidence of San Francisco residence. She stated that if the address on the check is not a San Francisco address, staff will use other means, such as checking the voter database, which they did in this instance. She also stated that staff told Mr. Rinaldi that he could present other documents to show proof of a San Francisco address.

Ms. Shaikh addressed the PayPal issue that was raised at the last meeting. She stated that no supporting documentation was submitted by the committee at first, and that staff helped Mr. Rinaldi by communicating with him and PayPal.

Ms. Shaikh stated that the \$100 cash donor cards were a red flag to staff, and inferred that the contributors did indeed contribute \$100 cash. She stated that staff received different stories from Mr. Rinaldi's campaign and introduced Menaka Mahajan to give an example of these irregularities.

Ms. Mahajan stated that on November 5, 2007, Mr. Rinaldi explained to her that a volunteer had been tallying the contributions and the volunteer had written \$100 on the cards. She stated that the explanation given by Mr. Rinaldi at this meeting was different.

Ms. Shaikh stated that she had never seen contributors come to an event with prepaid donor cards. She stated that the Candidate Guide for Mayor clearly explains that cash contributions for \$100 are not acceptable, that the California Fair Political Practices Commission is very strict that any \$100 cash contribution is illegal, and that this information was available to the public.

Ms. Shaikh also stated that the committee had ample opportunity to comply with and explain the submitted documentation. She stated that Mr. Rinaldi had numerous

unsupported contributions and other issues, but staff worked with him and gave him an opportunity to resubmit.

Ms. Shaikh stated that since the Commission's last meeting, Mr. Rinaldi submitted contributions he had not submitted before, and staff qualified \$800 in new contributions.

Commissioner Studley stated that she appreciates staff's work to assist Mr. Rinaldi's campaign, and she knows that candidates come with different levels of preparation. She stated that it seems some contributions raise a doubt such as the cross-outs, and she asked what is the standard practice by staff when a contributor submits a declaration regarding his/her residency.

Ms. Shaikh stated that from the implementation of public financing, staff has never accepted declarations to demonstrate residency or any other matters.

Chairperson Harriman stated that because this does involve public funds, staff should not accept affidavits because there needs to be an objective standard.

Commissioner Studley stated that even with objective standards, the cross-out could easily be a mistake. She stated that the question remains as to how staff resolves uncertainty that happens to be on the key piece of information such as the amount of the contribution.

Chairperson Harriman asked staff if all of the \$100 contributions that were crossed out were rejected by staff.

Commissioner Hansen asked if staff rejected all of the contributions in which there were cross-outs with no other contrary evidence. Ms. Shaikh responded affirmatively, and Commissioner Hansen then asked if staff rejected contributions in cases where there was no documentation supporting that the contribution was \$99, but there was a later affidavit that affirmed the contribution was only \$99.

Ms. Shaikh responded that those were also rejected.

Commissioner Ward asked how often it happens that staff

receives forms with \$100 cross-out and \$99 written in its place. Ms. Shaikh stated that this is first time they have seen so many, but in prior instances where it has occurred, staff has always rejected those contributions.

Chairperson Harriman stated that it is important to have rules that are clear, easy, known by the candidates, and enforceable by the Ethics Commission. She stated that the public must have confidence in what the Commission is doing, and that she is in favor of staff's method in dealing with these contributions because she worries that future campaigns will not know what the rules are and that the Ethics Commission will have more and more problems like this to deal with.

Mr. Gross stated that the declarations do not contradict the initial submissions and would be admissible in court. He stated that the Executive Director and staff have done a good job of trying to resolve the outstanding issues, but the \$99 cash contributions are still at issue, and that they were all legitimately \$99 cash contributions. He stated that Mr. Rinaldi is an artist and did not know about pushing paper and did not have the money to hire a campaign staff; it was all volunteer. He stated that the purpose of public financing is to enable individuals who might not have access to participate in the political process, and this situation is not one where something improper was going on.

Ms. Shaikh stated that with the \$100 cash contributions, there were also two contributors that were not crossed out.

Chairperson Harriman asked what the total amount of the contributions was with the \$100 crossed out.

Ms. Shaikh asked whether the \$800 worth of contributions that were accepted in the August 29 submission, which were PayPal contributions with the wrong dates, should be subtracted, as these were newly qualified.

Chairperson Harriman asked why they were qualified; it

appears that they are untimely.

Ms. Shaikh responded that staff was trying to be fair and was unsure where the Ethics Commission would stand on this.

Mr. Gross stated that he thought Ms. Shaikh's request to remove the \$800 strange. He stated that when Ms. Shaikh was asked by Chairperson Harriman how many \$99 contributions there were, and she realized that there are enough for Mr. Rinaldi to meet the \$25,000 threshold, that she tried to remove contributions that the Executive Director has already passed as eligible.

Commissioner Hansen stated that she agreed with Mr. Gross, and it seems that if the \$800 are already accepted, they should not be declined now. Commissioner Hansen stated that she wanted to know an answer to Chairperson Harriman's question as to how many purely \$100 cross-out contributions there were, removing contributions with any other problem.

Ms. Shaikh stated that there were 10 total.

Mr. Gross stated that there is another issue that he did not understand, which was the \$200 discrepancy between the amounts that Executive Director stated in total contributions from the last meeting to this one. Ms. Shaikh stated that she remembered working out the numbers, but did not recall exactly what was worked out and how that \$200 discrepancy occurred.

Mr. Gross said the \$200 discrepancy goes against Mr. Rinaldi, and if the Ethics Commission votes against him, then the discrepancy does not matter.

Chairperson Harriman stated the Ethics Commission must decide if it is acceptable to cross out "\$100" and write "\$99," and wanted to get a sense from the Commission on that issue. Commissioner Gusukuma stated that she heard staff say that even with the cross-out, there was some sort of credibility determination made that led staff to the conclusion that those

contributions should be disqualified. She stated that if that's the case, she would lean to supporting the staff because Ethics Commission cannot be involved in these underlying credibility determinations. However, if staff received the donor cards with a cross-out, and as a matter of policy, the staff decided that staff was not going to accept these contributions because of what they appear to be, and conduct no further inquiry, Commissioner Gusukuma stated that she thought that was something different. Commissioner Gusukuma stated she wanted to make sure she understood what staff was saying before she votes.

Ms. Shaikh stated that all along the way, staff believed that the supporting documentation was not reliable with respect to those cross-out contributions. She stated that there were issues with inconsistencies between what Mr. Gross was telling staff at different times. She stated that this left staff wondering what actually did happen.

Commissioner Ward stated that staff has not acted unreasonably from what he has heard. He stated that given the contradictions, it was reasonable that staff concluded what they did. Chairperson Harriman concurred. Commissioner Studley stated that in totality staff's position is reasonable.

Motion 07-10-19-3 (Ward/Harriman) Moved, seconded and passed (5-0) that the Commission deny the appeal.

Commissioner Hansen stated that she was not aware that staff does not accept affidavits and that this should be codified in some way. Also, she stated that PayPal issues should be resolved so that Ethics Commission can accept them in the future with the correct date. She stated that it is not clear that the Commission has decided the sole proprietorship issue and she would like the Commission to address it. Further, she said that this is a "he said she said" situation and she is concerned that there are members of the public who have submitted

affidavits that the Ethics Commission has in effect said we do not believe, and has sent out a public message that the Ethics Commission does not make it easy for grassroots candidates to get public financing.

Chairperson Harriman stated that the Ethics Commission should make policy decisions on the issues raised by Commissioner Hansen.

Public Comment:

Charlie Marsteller stated that the contribution cut-off should be \$101 not \$99. He stated that the legislative intent of public financing was to avail the use of public funds to those who seek elective office. He stated that he agrees that a strict audit is necessary to avoid misuse of those funds. But the law should also be used as a shield and not just a sword. He stated that the public wants these funds to be used and to make sure the public's interest is at the table.

John Rinaldi offered his help to the Commission regarding the PayPal issue, and stated that resolving it took all his time. He stated that the sole proprietor issue is unfair. He stated that he does not believe staff understands that a sole proprietor is an individual contribution. He stated that his campaign was out-argued, and that it was a weird thing that happened, but there was no malfeasance. He stated that the entire process has a calibration that does not have people like him in mind. He stated that to get their voices heard, candidates have to bend over backwards, and his entire campaign was dedicated to getting public funds. He stated that the 13 contributions have to be forfeited, which will bankrupt his campaign. He stated that he wanted to activate his constituency and that the political climate in San Francisco is a travesty. It was his intention to rise up but all he did was deal with public financing. He stated that he thought the Executive Director thought his campaign was a joke, that this is what it felt like. He stated that he did

appreciate everyone though. He offered to help the Ethics Commission in the future.

Commissioner Hansen asked Mr. Rinaldi if he had to forfeit the money. Mr. Rinaldi stated that he would and that he is being punished.

Ms. Shaikh explained that state law applies which prohibits cash contributions over \$100.

Commissioner Ward stated that he is puzzled why grassroots campaigns do not take the time to gather the information beforehand.

Mr. Rinaldi stated that he agrees, but the laws are complicated. Commissioner Studley stated that the Ethics Commission should take up Mr. Rinaldi's offer for help. She stated that the Ethics Commission is trying to advance the will of the voters and that Ethics Commission should look at the issues raised by Commissioner Ward and Commissioner Hansen.

Commissioner Hansen suggested that the Ethics Commission not penalize the campaign because there was no malfeasance. Chairperson Harriman agreed, but stated that other campaigns are involved and Ethics Commission needs to stick to the rules. Commissioner Hansen asked staff to look into the possibility of implementing her request.

V. Adjournment

Motion 07-10-19-4 (Ward/Gusukuma): Moved, seconded and passed (5-0) that the Commission adjourn.

The meeting was adjourned at 5:30 p.m.

Respectfully submitted,

Garrett Chatfield

Investigator/ Legal Analyst





**SAN FRANCISCO ETHICS COMMISSION
NOTICE OF REGULAR MEETING**

December 10, 2007 5:30 P.M.

and AGENDA

Room 408 City Hall

1 Dr. Carlton B. Goodlett Place, San Francisco

DOCUMENTS DEPT.

DEC - 6 2007

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I. Call to order and roll call.

II. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

III. Consideration of whether, under S.F. Campaign and Governmental Conduct Code section 3.234(a)(1)(E), the Commission should grant a waiver(s) from the one-year post employment ban under C&GC Code section 3.234(a)(1)(D). Two individuals have submitted requests for waivers: Steve Kawa, former Chief of Staff for Mayor Newsom, and Peter Fatooh, former member of the Assessment Appeals Board. (Discussion and possible action.)

IV. Consideration of draft informal advice letter regarding filing deadlines for initiatives under section 1.113 of the San Francisco Campaign and Governmental Conduct Code. Two members of the Commission have requested that a draft letter regarding questions raised by Melissa Mikesell related to disclosure requirements under section 1.113 be calendared for discussion. In August 2007, the Commission considered and provided direction to staff regarding an earlier version of the draft advice letter, which at that time was deemed a formal advice letter. Because the signature-gathering period has ended for the committee submitting the advice request, the draft letter is now deemed an informal opinion on the filing requirements under section 1.113. The draft advice letter is available at the Commission office and on the Commission website. (Discussion and possible action.)

V. Closed session. (Discussion and possible action.)

Closed session held pursuant to Charter section C3.699-13, Brown Act section 54956.9 and (c) and Sunshine Ordinance section 67.10(d) to discuss anticipated litigation as plaintiff.

Conference with Legal Counsel: Anticipated litigation as plaintiff

Number of possible cases: 4

- VI. Discussion and vote regarding closed session action and deliberations. (Discussion and possible action.)
- Discussion and vote pursuant to Brown Act section 54957.1 and Sunshine Ordinance section 67.12 on whether to disclose any action taken or discussions held in closed session regarding anticipated litigation.
- Motion: The Charter provides that deliberations regarding complaints are confidential. Pursuant to section C3.699-13, the Ethics Commission finds that it is in the best interests of the public (not) to disclose its closed session deliberations re: anticipated litigation.
- VII. Preliminary discussions of FY 08-09 budget. A proposed Ethics Commission budget for the fiscal year beginning July 1, 2008 is due in February 2008. At this meeting, the Commission will discuss a possible budget submission for FY 2008-2009. (Discussion and possible action.)
- VIII. Minutes of the special Commission meetings of October 19, 2007 and November 5, 2007. (Discussion and possible action.)
- IX. Executive Director's Report. An update of important Ethics Commission staff activities since the previous monthly meeting. (Discussion.)
- X. Items for future meetings. Commissioners may propose items for future agendas and the Commission may determine the priority of these items. (Discussion.)
- XI. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.
- XII. Adjournment.

Know Your Rights Under the Sunshine Ordinance

Government's duty is to serve the public, reaching its decision in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review. For more information on your rights under the Sunshine Ordinance or to report a violation of the ordinance, contact Frank Darby by mail to Administrator, Sunshine Ordinance Task Force, 1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco CA 94102-4689; by phone at 415 554 7724; by fax at 415 554 7854; or by email at sotf@sfgov.org. Citizens interested in obtaining a free copy of the Sunshine Ordinance can request a copy from Mr. Darby or by printing Chapter 67 of the San Francisco Administrative Code on the Internet, <http://www.sfgov.org/sunshine/>

The ringing of and use of cell phones, pagers and similar sound-producing electronic devices are prohibited at this meeting. Please be advised that the Chair may order the removal from the meeting room of any person(s) responsible for the ringing or use of a cell phone, pager, or other similar sound-producing devices.

This location is wheelchair accessible. In order to assist the City's efforts to accommodate persons with severe allergies, environmental illnesses, multiple chemical sensitivity, or related disabilities, attendees at public meetings are reminded that other attendees may be sensitive to various chemical-based products. Please help the City accommodate these individuals.

Individuals and entities that influence or attempt to influence local legislative or administrative action may be required by the San Francisco Lobbyist Ordinance [SF Campaign & Governmental Conduct, Code § 2.100] to register and report lobbying activity. For more information about the Lobbyist Ordinance, please contact the Ethics Commission at 25 Van Ness Avenue, Suite 220, San Francisco, CA 94102; telephone (415) 252-3100; fax (415) 252-3112 and web site www.sfgov.org/ethics

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SF Ethics Commission

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December 10, 2007

Minutes of the Regular Meeting of
The San Francisco Ethics Commission
December 10, 2007

Room 408, City Hall

I. Call to order and roll call.

Chairperson Harriman called the meeting to order at 5:31 p.m.

COMMISSION MEMBERS PRESENT: Susan Harriman,
Chairperson; Emi Gusukuma, Vice-Chairperson; Jamiene
Studley, Commissioner; Eileen Hansen, Commissioner; Charles
Ward, Commissioner.

STAFF PRESENT: John St. Croix, Executive Director; Mabel Ng,
Deputy Executive Director; Paul Solis, Investigator/Legal
Analyst; Garrett Chatfield, Investigator/Legal Analyst; Richard
Mo, Chief Enforcement Officer.

OFFICE OF THE CITY ATTORNEY: Andrew Shen, Ann O'Leary,
Deputy City Attorneys.

OTHERS PRESENT: Steve Kawa, former Chief of Staff for Mayor
Newsom; Peter Fatooh, former member of the Assessment
Appeals Board; David Waggoner; Peter Bagatelos; and other
unidentified members of the public.

MATERIALS DISTRIBUTED:

- Memorandum from Executive Director to Interested Persons
re: Interested Persons List, January 1, 2008
- Memorandum from Executive Director to Ethics Commission
re: Preliminary Budget Discussion, December 6, 2007

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- Memorandum from Executive Director to Ethics Commission re: Request for Waivers, November 28, 2007
- Draft letter from Executive Director to Melissa Mikesell re: informal advice letter regarding filing deadlines for initiatives under section 1.113 of the San Francisco Campaign and Governmental Conduct Code, November __, 2007
- Draft Minutes of the October 19, 2007 Special Meeting of the Ethics Commission
- Draft Minutes of the November 5, 2007 Special Meeting of the Ethics Commission
- Executive Director's Report to the San Francisco Ethics Commission for the Meeting of December 10, 2007

II. Public comment on matters appearing or not appearing on the agenda that is within the jurisdiction of the Ethics Commission.

Public Comment:

None.

III. Consideration of whether, under S.F. Campaign and Governmental Conduct Code section 3.234(a)(1)(E), the Commission should grant a waiver(s) from the one-year post employment ban under C&GC Code section 3.234(a)(1)(D). Two individuals submitted requests for waivers: Steve Kawa, former Chief of Staff for Mayor Newsom, and Peter Fatooh, former member of the Assessment Appeals Board.

Steve Kawa stated that he is the Executive Director for the Willie L. Brown, Jr. Leadership Center at San Francisco State University. Prior to this employment, he was the Chief of Staff for Mayor Newsom for three years, and for Mayor Brown for seven years. He stated that his position will require that he have contact with the Mayor's Office to help place students in intern positions. He stated that in order for the Summer 2008 and Fall 2008 internships to occur, he has to complete

arrangements by January or February 2008. He stated that he would need to speak to the Mayor's Office, but he is still within the one-year ban.

Commissioner Studley stated that the Ethics Commission has sparingly approved waivers. She asked how the Ethics Commission has interpreted the language "with the intent to influence a government decision" because it may be that facilitating the placement of interns would not constitute a prohibited post-employment activity. She also asked Mr. Kawa if there are other staff members at the Leadership Center who could do the activities in place of Mr. Kawa.

Mr. Kawa stated that the Center's staff is mostly part-time and that, essentially, he is the only full-time staff. He stated that he is the person responsible for ensuring the program is ready by the summer of 2008.

Executive Director St. Croix stated that the Ethics Commission has generally issued a waiver limited to an express activity, which in this instance would be to establish internships. He stated the limitation would mean that communications would have to be directly related to the internship program.

Commissioner Studley asked Executive Director St. Croix if Mr. Kawa would be able to conduct inquiries with the Mayor's Office regarding the internship program without the waiver.

Executive Director St. Croix stated that it is difficult to determine because even that might be construed as trying to influence a government decision.

Commissioner Studley stated that establishing these internships is valuable.

Executive Director St. Croix the Mayor's Office would have to engage in discussions with any school or university that wanted this kind of access for their students, including Mr. Kawa's Center.

Chairperson Harriman asked Mr. Kawa to inform the Commission on whether or not the internships were paid or unpaid, and how many schools are competing for the positions.

Mr. Kawa stated that there are many schools in the Bay Area that try to place their students in the Mayor's Office. He stated that he obtained his first job through an internship he had at the Massachusetts Statehouse. He stated that it is important for students at San Francisco State to have the same kind of experience. He stated that the program is still in development, so he cannot fully answer Chairperson Harriman's question. He stated that the program will place students throughout City government, and the Mayor's Office is one of the offices in City government.

Commissioner Hansen stated that she was interested in the Leadership Center, and asked if the waiver is necessary given the short time between now and January in order to launch the program. She asked what damage there would be to the program if the Commission does not grant the waiver. She stated that she is generally not in favor of granting waivers, and there should be a solid reason for doing so.

Mr. Kawa stated that he takes the letter and spirit of these laws seriously, and does not want the program questioned in the future, so he wanted to ensure that he did everything according to the law. He stated that without the waiver he will not be

allowed to talk to the Mayor regarding the program.

Commissioner Hansen stated that it appears that Mr. Kawa would still be able to craft the program without the waiver, and that any communication with the Mayor's Office would not be required until after the one year period is up at the end of January 2008.

Mr. Kawa stated that a delay would harm the program, and that he would be unable to do everything necessary to establish the program.

Commissioner Hansen asked Mr. Kawa if there was any element of the program that could be considered an attempt to influence City policy.

Mr. Kawa stated that the Center has only just been established, and that the Center is focused on two main objectives in the first year: the internship program and a speaker series.

Commissioner Gusukuma asked Deputy Executive Director Ng if the language of "intent to influence a government decision" as written in the code section at issue, would allow for a decision by the Mayor's Office to have an intern.

Chairperson Harriman asked Mr. Kawa if his early communications with the Mayor's Office would be to "influence" a government decision or more like fact gathering communications.

Mr. Kawa stated that he just wanted to go about this in the right way; he would not be able to predict if some other person might construe communications as attempting to influence a

government decision when his intent was to gather information.

Deputy Executive Director Ng stated that when the Ethics Commission decides to have interns on staff the interns are very helpful to the department. She added that it does not appear that the Ethics Commission has defined whether hiring an intern is a governmental decision. She stated it could depend on whether or not the positions are paid or unpaid.

Mr. Kawa stated that some positions would pay a monthly stipend and other positions could be unpaid.

Commissioner Ward commented that he is normally not in favor of waivers without a compelling reason. He stated that in this instance, Mr. Kawa wants the waiver in order to benefit the students and not for any self benefit.

Deputy Executive Director Ng stated that the intent of the law was to address undue influence and advantage, and this does not appear to be such a case.

Mr. Kawa stated that he just wants to be open and transparent about his work given that he was the Mayor's Chief of Staff for an extended period of time, and he is trying to do this the right way by getting a waiver.

Commissioner Studley stated that she agreed that asking for a waiver is the right thing to do, but she expressed concern that after receiving a waiver and the Center students obtain internships with the City, the Ethics Commission would be subject to public scrutiny regarding Mr. Kawa's previous employment with the Mayor.

Chairperson Harriman stated that this is the type of situation for

which the Commission should grant a waiver, when someone is acting on behalf of others.

Commissioner Gusukuma stated that the post-employment regulations appear to prohibit Mr. Kawa's communication with any City department that is subject to the control of the Mayor's Office.

Commissioner Hansen stated that Mr. Kawa probably contacted many departments working for the Mayor. She stated that even though he did not work for those departments, he worked for the Mayor, who appoints those directors and oversees those departments.

Deputy Executive Director Ng stated that under a new law recently enacted, the Chief of Staff of the Mayor's Office may not communicate with any City department under the Mayor's control, but this law does not apply retroactively to Mr. Kawa.

Motion 07-12-10-01 (Ward/Harriman): Moved, seconded and passed (3-2, Hansen and Gusukuma dissenting) that the Commission approve the waiver.

Public Comment:

None.

Peter Fatooh stated that he is requesting a waiver in order to represent taxpayers before the Assessment Appeals Board. He stated that he served on the Assessment Appeals Board for 24 years. He stated that he is only seeking the waiver to appear before Board 2, and that he served on Board 1, which deals with downtown business properties. He stated Board 2 deals with residential properties. He stated that when he served on

Board 1, approximately five times per year he would be called to serve on Board 2.

Mr. Fatooh stated that the filing period for appeals by taxpayers is from July 1 to September 15. He stated that his one year prohibition would end in September 2008, and the matters will not be calendared by the Assessment Appeals Board until 2009. He stated that the waiver would allow him to file the paperwork with the Assessment Appeals Board during the filing period.

In response to Commissioner Studley's question if the Assessment Appeals Board members are paid, Mr. Fatooh stated that each member is paid \$100 per session.

Commissioner Hansen stated that Mr. Fatooh could potentially appear before some of his former colleagues, and asked Mr. Fatooh if he would be appearing in front of any member on Board 2 with whom he also served as a member.

Mr. Fatooh stated that he has served with some of the current members on isolated panels, but not regularly and he has no social relationship with any member.

Commissioner Hansen stated that she is concerned of the appearance that Mr. Fatooh would be requesting former colleagues to make decisions on his behalf.

Chairperson Harriman asked Mr. Fatooh when he last served on Board 2, and Mr. Fatooh responded that it was the summer of 2007.

Commissioner Gusukuma asked Mr. Fatooh if he participated in joint meetings between the two boards, and he answered that at least once a year the two boards met for administrative

purposes.

Commissioner Ward stated that he is reluctant to vote in favor of waivers, and that he cannot see the compelling reason in this case to grant a waiver. He stated that if the Ethics Commission grants this waiver, it would be hard to ever deny a waiver to another person with the same circumstances.

Mr. Fatooh stated that this is compelling because the denial would allow competitors to have an advantage over him because he would not be able to assist taxpayers during the filing period.

Commissioner Ward stated that other Assessment Appeals Board members have waited for the year to expire before representing individuals in front of the board.

Commissioner Hansen commented that she would not want to base her decision on whether or not to grant a waiver based upon the board's calendar. She stated that she can foresee cases being heard before 2009.

Mr. Fatooh stated that the filing period does not end until September, and no case can be calendared until the close of that period.

Commissioner Hansen stated that she is concerned with the appearance of impropriety based on the fact that former colleagues would be hearing cases in which Mr. Fatooh represented the taxpayer. She stated that she would vote against granting the waiver.

Chairperson Harriman stated that she is leaning in favor of granting the waiver based on two factors: that Mr. Fatooh

would appear before a different board and no case would be heard until 2009.

Mr. Fatooh asked the Commission if he would still be able to complete and file the paperwork for taxpayers if his request for a waiver is denied.

Chairperson Harriman asked Mr. Fatooh when the Assessment Appeals Board actually sees the paperwork, and he responded that they did not see the paperwork until the day of the hearing.

Commissioner Hansen asked Mr. Fatooh if he was a sole practitioner, and he responded that he was.

Deputy Executive Director Ng questioned Mr. Fatooh regarding the process to file the paperwork with the board. She also asked if filing the paperwork was merely a clerical function.

Mr. Fatooh explained the process and that the forms are filed with the administrator.

Deputy Executive Director Ng stated that the regulation would prohibit the filing of a form, because that act is asking the department to advance a decision.

Mr. Fatooh stated that he would like an opinion from the City Attorney on this interpretation of the regulation.

Deputy City Attorney Shen stated that Mr. Fatooh could ask for an opinion from either the Ethics Commission or the City Attorney.

Deputy Executive Director Ng explained to Mr. Fatooh the process to obtain formal and informal advice from the Ethics

Commission.

Mr. Fatooh stated that he thinks the benefit of the doubt should be in his favor.

Chairperson Harriman asked if there is anything to prevent the homeowners from filing the paperwork themselves. Mr. Fatooh responded that homeowners are not prohibited from filing on their own, but most will not.

Mr. Fatooh stated that if this request is denied, he will have to try to do whatever work he can without crossing the line.

Chairperson Harriman stated that the Ethics Commission can either vote now or Mr. Fatooh can ask for formal advice, see what the response is, and then ask for a waiver.

Mr. Fatooh stated that he would like to know what the basis is for the decision to deny his request if it is denied by the Ethics Commission.

Chairperson Harriman stated that if it is denied, it simply means the Ethics Commission is not giving Mr. Fatooh any special dispensation.

Mr. Fatooh asked Chairperson Harriman if the Ethics Commission is interpreting the law by its denial of the waiver.

Chairperson Harriman stated that the Ethics Commission is not saying one way or the other.

Commissioner Hansen stated that she is not comfortable supporting the waiver, but she is also not comfortable with him

"doing whatever he wants to do."

Mr. Fatooh expressed his disagreement with the Ethics Commission's decision.

Commissioner Ward stated that Mr. Fatooh knew that he would have to wait a year after he left the board.

Commissioner Hansen suggested that he seek the advice of staff on the ability of a homeowner filing with his help, but this is a still a first step in the process in her view.

Motion 07-12-10-02 (Ward/Harriman): Moved, seconded and denied (1-4, Ward, Hansen, Gusukuma, Studley dissenting) that the Commission grant the waiver.

Public comment:

None.

IV. Consideration of draft informal advice letter regarding filing deadlines for initiatives under section 1.113 of the San Francisco Campaign and Governmental Conduct Code. Two members of the Commission have requested that a draft letter regarding questions raised by Melissa Mikesell related to disclosure requirements under section 1.113 be calendared for discussion. In August 2007, the Commission considered and provided direction to staff regarding an earlier version of the draft advice letter, which at that time was deemed a formal advice letter. Because the signature-gathering period has ended for the committee submitting the advice request, the draft letter is now deemed an informal opinion on the filing requirements under section 1.113.

Chairperson Harriman announced that the request for the advice letter was withdrawn.

V. Closed session

Motion 07-09-10-03 (Gusukuma/Studley): Moved, seconded and unanimously passed (5-0) that the Commission go into closed session to receive legal counsel.

The Commission went into closed session at 6:39 p.m. Present at the closed session were Chairperson Harriman, Vice-Chairperson Gusukuma, Commissioner Studley, Commissioner Hansen, Commissioner Ward, Deputy City Attorney Ann O'Leary, Executive Director St. Croix, Deputy Executive Director Ng, Chief Enforcement Officer Richard Mo, Investigator/Legal Analyst Paul Solis, and Investigator/Legal Analyst Garrett Chatfield.

VI. Discussion and votes regarding closed session action and deliberations.

At 8:17 p.m. the Commission returned to open session.

Motion 07-09-10-04 (Gusukuma/Studley): Moved, seconded and unanimously passed (5-0) that the Commission not disclose its deliberations during the closed session.

Public Comment:

David Waggoner requested that the Commission return to closed session. He requested that the Commission reconsider its deliberations during the closed session and use the 45 days allowable under the regulations.

Tony Hall stated that he finds it difficult to understand how the Ethics Commission could make a determination after the closed session presentation.

Chairperson Harriman stated that the Commissioners took great care to review all the documents and briefs provided to them, and that they have had ample time to consider the parties' arguments prior to the current meeting.

Chairperson Harriman made a public announcement regarding complaint number 24-050928, stating that the Ethics Commission has made the unanimous determination that there is probable cause to believe that the following violations of the

Campaign Consultant Ordinance and Political Reform Act occurred, and that Respondent Tony Hall committed these violations:

1. Misused campaign funds to repay a \$12,000 personal loan in violation of California Government Code sections 89510 and 89512, and San Francisco Campaign and Governmental Conduct Code sections 1.106 and 1.122;
2. Misreported repayment of a \$12,000 personal loan as campaign staff salary in violation of California Government Code section 84211, and San Francisco Campaign and Governmental Conduct Code sections 1.106 and 1.170(f);
3. Misused campaign funds for improper automobile expenses in violation of California Government Code section 89516(d), and San Francisco Campaign and Governmental Conduct Code sections 1.106 and 1.122;
4. Misused campaign funds for meal expenditures after his August 5, 2004, withdrawal date in violation of San Francisco Campaign and Governmental Conduct Code section 1.122(b)(i);
5. Misused campaign funds for expenditures that were not reasonably related to a legislative, governmental, or political purpose in violation of California Government Code sections 89510 and 89512, and San Francisco Campaign and Governmental Conduct Code sections 1.106 and 1.122;
6. Failed to report a \$12,000 personal loan on his 2004 and 2005 Statements of Economic Interests.

Chairperson Harriman stated that Respondent is presumed to be innocent unless and until such time that the allegations are proven at a subsequent hearing on the merits. She stated that each commissioner has certified on the record that they have personally heard or read the testimony, and reviewed the record and evidence in voting to find probable cause.

The Commission took a five minute recess at 8:30 p.m.; and Commissioner Gusukuma was

excused at that time.

VII. Preliminary discussions of FY 08-09 budget. A proposed Ethics Commission budget for the fiscal year beginning July 1, 2008 is due in February 2008. At this meeting, the Commission will discuss a possible budget submission for FY 2008-2009. Executive Director St. Croix stated that the Mayor has asked all departments to develop a 13% budget cut, but smaller departments have been targeted to cut the budget by 6%. The Ethics Commission will submit its budget, including five new positions, but Executive Director St. Croix will cut from the temporary staff budget and various smaller areas if needed.

Chairperson Harriman asked if the budget naturally increases due to staff salary increases.

Executive Director St. Croix responded that each employee's wage increases are factored into the long-term budget, so the cuts must come from other areas, such as the temporary staff budget.

Chairperson Harriman stated that until Executive Director St. Croix meets with the Mayor's Office, he will not know what cuts are needed.

Executive Director St. Croix stated that funding for the Ethics Commission will come from a different revenue stream this year. The Ethics Commission will not receive funding under Proposition O. He stated there will be about \$600,000 available for candidates for the Board of Supervisors, and that there will be four open Board seats next November. Executive Director St. Croix stated that the Ethics Commission needs to hire a new auditor, records clerk, financial reporting officer, and an assistant to the directors. He stated that if budget cuts are

necessary, then staff will prioritize those positions. Chairperson Harriman stated that she would like the other commissioners to send Executive Director St. Croix any thoughts they might have regarding the budget.

Commissioner Hansen asked Executive Director St. Croix what process the Commission should adopt to advocate for the budget.

Chairperson Harriman stated that the same commissioner does not have to be present for all parts of the budget discussions.

Public Comment:

None.

VIII. Minutes of the Commission meetings of October 19, 2007 and November 5, 2007.

Commissioner Hansen requested that page seven of the minutes for the November 5, 2007, special meeting be changed. She stated that she sent the requested change to Executive Director St. Croix. She proposed that the sentence in question did not fully characterize what she said. The sentence as written implied that she was speaking on behalf of the entire Commission. She stated that at the time, she was speaking as an individual Commissioner. She offered an appropriate edit.

Motion 07-09-10-05 (Hansen/Ward): Moved, seconded and unanimously passed (5-0) that the Commission adopt the minutes from the October 19, 2007 and November 5, 2007, meetings with the change suggested by Commissioner Hansen.

Public Comment:

None.

IX. Executive Director's Report

Executive Director St. Croix stated that under the Brown Act, the Ethics Commission is required to re-create its interested persons list. He stated that in January, the Ethics Commission

will complete its last initial adoption of a Statement of Incompatible Activities. He stated that the next hearing regarding Supervisor Jew will be held on February 8, 2008. He stated that Myrna Lim has not yet filed a lawsuit against the Ethics Commission.

Commissioner Studley questioned Executive Director St. Croix regarding the interested persons list, and how staff will handle updating that list. Executive Director St. Croix answered that in January 2008, staff will address this.

Commissioner Hansen stated she would like information regarding what occurred at the interested persons meeting regarding fines, and Executive Director St. Croix responded that staff will generate a memo.

Commissioner Hansen asked Executive Director St. Croix to provide some information regarding the conflicts of interest training with a focus on gifts that occurred on November 27, 2007.

Deputy Executive Director Ng responded that the Fire Department requested a training to get an overview of the laws regarding gift restrictions.

Commissioner Hansen suggested that the Ethics Commission calendar a clarification as to what the gifts policy is. Chairperson Harriman stated that because this issue occurs around the holiday, the Ethics Commission should post on its website information on gift limits.

Commissioner Studley stated that the Ethics Commission should consider a press release about gift restrictions to inform the

public.

Chairperson Harriman agreed that it is important to inform the public that City employees do have such restrictions, and a press release would reach many more people.

Commissioner Hansen stated there are various levels of complexity regarding the gift limits, and the public needs clarity on the grey areas of the law.

Public Comment:

None.

X. Items for future meetings

None.

Public Comment:

None.

XI. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission

Mr. Fatooh stated that he wanted to make a complaint regarding Assessor Ting. He claimed that Assessor Ting lobbied for a member of Ting's campaign staff who was also a \$500 donor to replace Mr. Fatooh on the Assessment Appeals Board. Mr. Fatooh was advised by Chairperson Harriman to make a formal complaint, as the Commission does not accept complaints at public meetings.

XII. Adjournment

Public Comment:

None.

Motion 07-12-10-06 (Studley/Ward): Moved, seconded and unanimously passed (4-0) that the Commission adjourn. The meeting was adjourned at 8:58 p.m.

Respectfully submitted,

Garrett Chatfield

Investigator/ Legal Analyst



